



HOW WILL THEY SURVIVE IN THE NEW MARKETPLACE OF SOCIAL MEDIA?

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ABSTRACT

This paper talks about how trademarks support the protection of using the trademark logo correctly on social media. It demonstrates how protection is often implemented within the walled gardens of social media, through the reconciliation of unauthorised use of the trademark logo on social media alongside maintaining the proper to exercise freedom of expression. Legal conflicts between trademark holders, social media providers and internet users became manifest within the light of wide-scale unauthorised use of the trademark logo on social media in recent decades. This paper also talks about the increasing misuse of trademarks on social Media and the importance of polices, rules and monitoring in context of protecting the brand on each platform. It also discusses the relation between fake accounts and trademarks and how it has led to spamming with the help of a case study on fake twitter accounts. The paper tries to decipher what constitutes infringement in the case of trademarks. It explores the dimensions of brands and parody. It also discusses consumer complaints and ‘Cyber Gripping’ with the help of the landmark case of Mayflower Transit, LLC v. Prince. It further elaborates the topic of domain names and cybersquatting with relation to the eUDRP and the INDRP. Platform-Specific (Twitter / LinkedIn / Facebook) Trademark Enforcement Mechanisms are also explained in the paper. Asserting the protection of the trademark logo against unauthorised use during a commercial environment, this paper explores why protection enforcement should be made automatic. Varieties of issues are discussed including the scalability of litigation on a case-by-case basis, and whether safe harbour provisions for online service providers should be substituted for strict liability. This paper offers an unparalleled insight into the utilization of the trademark logo. The paper also gives sensible solutions to guard the trademark logo on social media.

Keywords: social media, trademarks, fake accounts, spamming, and cybersquatting

INTRODUCTION

Trademark law serves both commerce and consumers. Its primary purpose is to guard consumers from confusion as to the source of products and services. Trademark law serves to guard businesses by ensuring exclusivity within the brands they curate. Once a business has chosen a reputation and cultivated a brand, that branding becomes identifiable to consumers because the source of the business' goods or services.²

With the upsurge in social media, there are more vast and accessible marketing outlets available to businesses and their branding than ever within the history of yank commerce. It's become essential for businesses to determine brand visibility across social media platforms. While there are countless benefits to social media marketing, there are certain drawbacks and certain pitfalls also. This text explores the problem in controlling brand identity in light of just about unrestricted third-party participation in social media and therefore the particular trademark problems posed by the prevalence of hashtags in social media marketing.

Social media turned the once simple octothorpe, symbolizing the words “pounds” and “number,” into a really powerful marketing tool. “A ‘hashtag’ may be a sort of metadata comprised of a word or phrase prefixed with the symbol ‘#.’”³

By applying a hashtag to the start of a word or phrase on social media outlets, like Instagram and Twitter, users turn that word or phrase into a searchable expression.⁴ Business owners and marketing professionals alike tout the facility of hash tagging a trademark or service mark into a searchable, trend-able expression.

The scope and necessity of social media marketing is observable within the use of business' allocated marketing budgets. Adweek.com reported the subsequent from a poll of 5,000 marketers conducted in early 2015 by Salesforce: 70% planned to extend social media ad spending; 70% planned to extend spending on non-paid social media marketing; 66% responded that “social media was core to their business;” and 38% planned to shift some of their marketing budgets previously allocated to traditional marketing to digital marketing.⁵

² U.S. Trademark Law, § 1(2), 15 U.S.C. § 1051, 2012 (“The application shall include . . . the goods in connection with which the mark is used, and a drawing of the mark.”).

³ TMEP, § 1202.18, 8th ed., 2015 (entitled “Hashtag Marks”).

⁴ Id.

⁵ Shea Bennett, *70% of Marketers Will Increase Social Media Spend in 2015*, SOCIAL TIMES (Jan. 30, 2022, 6:00 PM), <http://www.adweek.com/socialtimes/socialmarketing-2015/504357>.

While it's liberal to use and have interaction in social media outlets, marketers spend these dollars on sponsored advertisement buys and social media expertise. Social media marketing experts strategically maximize a brand's social media prevalence with sponsored advertisements, posting content, and, yes, strategic use of hashtags. Twitter and Instagram are the two primary social media outlets to revolutionize the hashtag. Twitter may be a service on which any user may share a thought, an experience, or an idea in 180 characters of text or less, a photo, or a video, each called a "tweet."⁶

Hashtags with accompanying words or phrases appropriate the corresponding tweet to a topic embodied by such word or phrase.⁷ Each Twitter user features a timeline on his or her profile displaying tweets in reverse chronological order.⁸ The timeline and profile of a business become the Twitter face of the brand. Instagram is "a fun and quirky thanks to share your life with friends through a series of images."⁹

Similarly, each user features a profile and timeline of photos or videos displayed in reverse chronological order. Users can provide comments, including hashtags, to photo or video posts. Placing a hashtag at the start of a word or phrase on both Twitter and Instagram turns the word or phrase into a hyperlink that results in topically related posts.¹⁰ Perhaps the best advantage social media outlets like Twitter and Instagram pose to marketers is that the ability to interact with their audience.¹¹

When a user tweets or posts on Instagram, other users may then comment, repost, share directly, and basically participate in the conversation surrounding the tweet or post. This audience interaction provides valuable insight to marketers and inflames the reach of an easy marketing effort, sometimes virally. Including a hashtag word or phrase makes such conversations sortable by topic.¹²

If the hashtag goes viral, the social media marketplace considers it to be a trending topic, a

⁶ *The Story of a Tweet*, TWITTER, (Jan. 30, 2022, 6:10 PM), <https://about.twitter.com/what-is-twitter/story-of-a-tweet> ("TWEET").

⁷ *Id.* ("Hashtags assign a topic to a Tweet.").

⁸ *Id.*

⁹ *FAQ*, INSTAGRAM, (Jan. 30, 2022, 6:15 PM), <https://www.instagram.com/about/faq/>.

¹⁰ TWEET, *supra* note 5; *How Do I Use Hashtags?*, INSTAGRAM, (Jan. 30, 2022, 6:20 PM), <https://help.instagram.com/351460621611097> ("HASHTAGS").

¹¹ Stephanie Chandler, *The Hidden Benefits of Social Media Marketing: Why Your Strategy May Be Working Better Than You Think*, FORBES / FORBES WOMEN, (Jan. 30, 2022, 6:30 PM), <http://www.forbes.com/sites/work-in-progress/2013/03/12/the-hiddenbenefits-of-social-media-marketing-why-your-strategy-may-be-working-better-than-youthink/>.

¹² TWEET, *supra* note 5; HASHTAGS, *supra* note 9.

pinnacle for any social media marketing effort. It is this audience interaction that creates the hashtag such a strong marketing and branding implement. But, “with world power comes great responsibility.”

Successful registration of a mark with the US Patent and Trademark Office provides the owner of that mark the “exclusive right to use the registered mark in commerce on or in reference to the goods or services laid out in the registration.” The worth in trademark ownership lies within the right to exclusive use of the mark. Thus, it's within the trademark owner's best interest to police third-party use of his or her mark so as to guard it from dilution and/or consumer confusion with an identical mark.

So, there's a drag. Trademark owners are encouraged to limit third-party use of their marks. However, they're simultaneously well served by encouraging audience participation in their social media marketing, especially to exacerbate the utilization of their marks as hash tagged trending topics.

Aim of the paper

The basic aims for writing this research paper were to study:

- ✚ The misuse of trademarks on social media
- ✚ The importance of policies, rules and monitoring brands
- ✚ The case of fake accounts and spamming
- ✚ The approach of consumer complaints
- ✚ The way forward for trademark enforcement mechanisms

Research methodology

In accordance with the objectives of the present study, quantitative and qualitative methods of research have been adopted. This has been done primarily with the help of case laws and leading judgments of various courts. The reports of committees and commissions have been scanned to sifting the issues relating to the research problem. A thorough analysis of content from sites like JSTOR, SCC and Westlaw were done to generate a better perspective.

MISUSE OF TRADEMARKS ON SOCIAL MEDIA

Activity in social media not only provides information on a product or service identified with a trademark, but also contributes to the overall image and reputation of an individual or company. Various **kinds of misuse of trademarks**¹³ on social media are there, for example,

¹³ Bibiana Agudelo & Daniel Trujillo, *Addressing trademark infringement and misuses in Social Media*, OLARTEMORE, (Jan. 30, 2022, 6:40 PM), <https://www.olartemore.com/en/addressing-trademark->

1. **Suggesting a Relationship When There Isn't One:** Using another person or entity's trademark in social media that means an affiliation or sponsorship when there really isn't one is trademark misuse. For instance, you can't use a trademarked name during a URL or social media profile name when the owner of that URL or social media profile has no affiliation with the brand of any kind.
2. **Using False or Misleading Advertising:** Comparing your product to others on the market in your advertisements is ok as long as all of the knowledge provided is true. If your ads are fair and tell the complete, true story, then it's a sort of comparative advertising that's legal. If your ads are deceptive or false in any way or mislead consumers in any way, then you're misusing a trademark in social media.
3. **Diluting Another Person or Entity's Trademark:** Using another person or entity's trademark during a way that creates ownership of that trademark confusing to consumers is taken into account to be trademark misuse and is mentioned as "blurring" the trademark. As a result, the worth of the trademark is diluted because consumers might be confused and believe that the trademark owner is behind the non-related product or service. Using another person or entity's trademark during a way that tarnishes the reputation of the first mark and brand also results in value dilution.

Hashtags and trademarks:

In *Eksouzian v. Albanese*,¹⁴ parties who manufactured and sold an equivalent sort of product (compact vaporizer pens) agreed to settle trademark infringement claims. The parties agreed that, whilst the plaintiffs had exclusive use of the word 'CLOUD' as a unitary mark, it couldn't use the word 'CLOUD' in close association with the words 'PEN', 'PENS', 'PAD', etc. (a conduct allowed to the defendant). The defendants used the subsequent image to market their product: The plaintiff used the hashtag '#cloudpen' in social media. The defendant claimed that this was a violation of the agreement.

The court concluded that *"hashtags are merely descriptive devices, not trademarks, unitary or otherwise, in and of themselves, their use "is merely a functional tool to direct the situation of the plaintiffs' promotion in order that it's viewed by a gaggle of consumers, not an actual trademark."*

infringement-and-misuses-in-social-media/.

¹⁴ *Eksouzian v. Albanese*, No. CV 13-00728-PSG-MAN, 2015 WL 4720478 (C.D. Cal. Aug. 7, 2015).

While the utilization of the # symbol seems to not be a transparent breach of trademark rights their use isn't completely clear for free of charge use. During the Olympic games of July 2016, held in Rio de Janeiro, an issue arose involving the utilization of '#Rio2016'. The USOC (US Olympic Committee) sent cease and desist also as warning letters to non-Olympic sponsor companies that used USOC's trademarks in hashtags and social media, like #Rio2016 and #TeamUSA.

Oiselle, a women's apparel company, posted "She's getting to Rio!" and "#RoadtoRio" in an Instagram post when one among their sponsored athletes qualified for an occasion. Soon after, the USOC contacted Oiselle requesting cease of use. Eric Goldman, a Professor of Law at Santa Clara University, interviewed by the BBC, considered the approach as "overly aggressive and ridiculous": *"I think that trying to inform companies that they can't use the hashtag #Rio2016 or #TeamUSA in their tweets, most of the time they're going far afield of what the law permits and when companies use the ambiguities of trademark law to undertake and squelch socially beneficial conversation, I call that bullying."*

The German Olympics Sports Confederation and Team Gb (the mark name used since 1999 by British Olympic Association (BOA) for his or her Great Britain and Northern Ireland Olympic team), as did the IOC on the subject, published guidelines that emphasized the strict restrictions on the utilization of IOC registered marks by non-sponsors. Such guidelines covered the utilization of hashtags like #Rio2016. They explained that such use verged on trademark infringement territory and intrinsically, non-Olympic partners and non-sponsors should refrain from their use.

IP rights policies like Twitter's, with strict management of infringement of copyright, received requests to get rid of trademarks in hashtags. No action was taken although it's clear that the utilization of wording associated with the Olympics by non-sponsors shouldn't be pursued. The argument that use of a mark during a hashtag as merely descriptive will likely be unsuccessful in such cases. There are some cases within the U.S. during which third parties have attempted to use hashtags as evidence of the distinctiveness of a mark.

The USPTO however, has declared that hashtags aren't considered a big source of distinctiveness *"because a hashtag will usually be perceived as a part of a web social media search term, a hashtag generally serves no source-indicating function and adding such*

symbol or term to an otherwise unregistrable mark typically doesn't render the mark registrable.”

In light of the foregoing despite the recognition and effectiveness that a hashtag may wear social media, this may not necessarily have an equivalent positive outcome within the registration process of a trademark. An example of the utilization of social media as a way to advertise a mark, without incurring in trademark infringement, is that the advertisement of Oreo cookies during a twitter post during an influence outage at the Super Bowl a few years ago. They tweeted an image of an oreo with the caption: “You Can Still Dunk within the Dark.” While the ad could connect the sentence with the Super Bowl, there was no use of hashtags or names to the competition or the sports teams /companies.

While companies and individuals should take care and refrain from using third party trademarks in their ads and promotional materials also as social media, it's important to acknowledge that some uses by third parties in hashtags and articles are simply informative and thought of newsworthy material. In light of this, a careful assessment of the utilization should be conducted before the discharge of the remark on social media so as to avoid uncomfortable situations that involve cease and desist requests and claims from trademark owners.

The approach to avoid such misuse of trademarks:

- When handling trademark infringement, counsel should obtain evidence of the infringement by either screen capturing or printing of the page, ensuring there's a transparent display of the date and site of the posting.
- The language utilized in the cease and desist letter should be carefully chosen because it might be utilized in eventual litigation and whilst a source to settle on venue.
- Counsel should review the IP policy of the web site where the illegal or misuse was found so as to issue a takedown notification. A report of copyright or trademark infringement to the location can have use or domain names disabled or references removed. It's important to become conversant in a site's policy towards infringement or misuse allegations and if there's a bent to help the legitimate trademark owner. Some social media sites are against counterfeiting and false information on account holders however, there are websites that don't have a transparent policy against them.
- Counsel should research the background of the infringer so as to stop harm on the

company's reputation. In some cases, the infringer requires special care. A softer or friendly initial approach could also be advisable. Engaging during a friendly conversation with the infringer could prevent a negative social campaign against a company's name and its trademarks. Some infringers prefer to disseminate cease and desist letters creating a picture of being threatened or bullied by an outsized company, and even prevented from exercising their freedom of speech right. They create noise and need to draw in publicity to their actions. A friendly communication to the infringer might be an efficient strategy against such this sort of unauthorized trademark users will likely not publish a friendly communication from the trademark owner requesting cease of the utilization.

- Counsel should take care when the misuse or infringement of the trademark is formed by a supporter of the company's brand (e.g. someone labels its product with wording that would be confused with a company's trademark or could misrelate it to it). The approach should be tailored to not offend the customer while explaining the importance of protecting the adequate use of the trademark. In some cases, the unauthorized user might be invited to hitch the trademark owner's adequate promotion of the brand within the media where there was initial misuse or could also be offered incentives so as to not pursue the erroneous conduct. The approach should be inviting and not forceful in these cases.

PROTECTING THE BRAND ON EACH PLATFORM – THE IMPORTANCE OF POLICES, RULES AND MONITORING

What is brand protection?

Brand protection is that the process of protecting the property (IP) of companies and their associated brands against counterfeiters, copyright pirates, and infringers of other sorts of IP, like patents, design rights, color mark and trade dress. This is done not only to guard the loss of revenue from a corporation but also to guard a company's image, reputation and overall value. Fundamentally, brand protection prevents brand abuse.

Brand abuse

Brand abuse is an umbrella term which refers generally to an outdoor party infringing on a brand's property so as to require advantage of its well-respected reputation. Brand abuse can are available many forms, including, but not limited to:¹⁵

¹⁵ Ryan Williams, *The Ultimate Guide to Brand Protection Red Points*, RED POINTS (Jan. 30, 2022, 6:15 PM), 70

- **Counterfeiting:** A counterfeit product imitates the merchandise from an authentic brand, but is formed unofficially, by external sources. The fake product will use the logos and trademarks of the authentic brand without permission, so as to deceive customers. For some perspective, by 2022 the worldwide counterfeiting industry is predicted to be worth \$4.2 trillion. To place this in real terms, if counterfeiting were an independent nation, its economy would be round the 4th biggest within the world. Counterfeiting is simply one sort of property infringement, because it specifically targets the trademarks of an authentic brand. So, working against counterfeiting is that the primary goal of brand name protection agencies. Companies got to remain vigilant against any sort of brand abuse of which they'll become a target. However, the foremost pervasive and troublesome for brands is counterfeiting.
- **Rogue websites:** Rogue websites are sites created for malicious intent, either against a legitimate company or by infringing its IP. They are available during a number of variations: Cyber squatters; sites that claim domain names so as to require advantage of other brands' trademarks. Typo squatters; these believe internet users making mistakes while typing within the address of other websites. Imitation sites; websites that plan to completely pass themselves off because the website of an existing authentic brand.
- **Copyright piracy:** A copyright is that the legal protection granted to creators of artistic, literary and scientific works. Brands got to be protective of their copyright, albeit they're not creating art, books or scientific reports. Counterfeiters will copy a product's authentic photographs and use them to market and legitimize their own illegal product listings online.
- **Trademark squatting:** Trademark squatters register trademarks in bad faith. This will be available variety of forms, including foreign registration of marks belonging to brands yet to register abroad, and transliteration issues, just like the Jordan/Qiaodan case.
- **Patent theft:** Patents are legal protections given to inventive products which give an innovative solution to a drag. Inventors who have created a replacement product are entitled to patent protection, because it forbids outside parties from using their designs, and out of doors parties infringing on patents will take advantage of the time and money invested into designing the invention.
- **Social media impersonation:** Counterfeiting, and sorts of IP theft generally, are

growing quickly on social media, and are having an outsized negative effect. Unofficial third parties create social media accounts imitating authentic brands, then use their fake profiles to sell counterfeits, send users to phishing pages, and sometimes to distribute harmful malware.

What does brand protection do?

- **Detection:** Finding infringements online, wherever they'll be. This will include a counterfeit listing on ecommerce, a rogue website or an impersonating social media profile, alongside variety of other sorts of infringement.
- **Validation:** Ensuring that the products labeled as infringements truly are infringements is a crucial step. Validation is used in order that authentic companies aren't penalized by mistake while trying to enforce IP rights.
- **Enforcement:** Enforcement is that the step of truly removing IP infringements online. This includes removing the infringing product listed on a web marketplace, taking down a rogue website, or closing the imitation account from social media.
- **Reporting:** The final stage of a brand protection service. Reporting refers to presenting information to brands that's useful and actionable, so as to remain conscious of the status of property online, then to enhance the method of brand name protection within the future.

Brand protection software

With counterfeiters now ready to fully cash in of the capabilities of the web, the sole way the services above can truly be implemented is by taking advantage of recent brand protection technology. There are four key aspects to brand protection software:

- Keyword monitoring
- Image recognition
- Machine learning
- Smart user

How to protect one's brand?

Knowing the way to keep property protected is important knowledge for several brands. Counterfeiters are persistent when targeting companies they think they will take advantage of, and can use any and each tactic at their disposal to remain in business. There are varieties of strategies that brands can implement to assist them within the fight against infringers, both

offline and within the online world.

- Register your IP – Without formally registering property, there's little or no real legal recourse for brands that suffer from brand abusers. In fact, without trademarks formally registered, counterfeiters would be liberal to cheat logos and brand names. Getting property registered must be the primary step for creating a brand protection solution.
- NDAs with partners – this is often especially important for brands with patent-protected designs and processes. Agreeing to figure with other companies without protections for tip can put a brand at an enormous risk.
- Fight rogue websites – Rogue websites are sites found out for malicious or criminal purposes. They are available during a number of variations, all of which are potentially damaging to brands. You'll fight this by registering relevant domain names to your brand, and removing harmful sites.
- Have a robust social media presence – As social media grows as a crucial platform for counterfeiters, brands got to maintain a robust presence to determine them as authentic. Using on-site reporting tools and using undercover accounts are vital to removing bad actors on social media.
- Educate your customers – Customer education is often wont to great effect in brand education in two ways. Helping customers to acknowledge the differences between legitimate products and fakes will better equip them to avoid getting tricked. Educating people on the general harms of counterfeiting also will make them less likely to hunt out knockoff products.

Privacy Policy:¹⁶

Under privacy law, a privacy policy may be a statement or legal instrument that discloses some or all of the ways a celebration gathers, uses, discloses, and manages a customer's or client's data. Typically, companies share this customer/client data with their third-party business partners. By annually informing customers/clients via mailed notices of company privacy practices concerning the gathering and therefore the distribution of customer/client data that's under company management, companies fulfill a legal requirement to guard a customer's or client's privacy.

¹⁶ Mary Shacklett, *How to create a privacy policy that protects your company and your customers*, TECH REPUBLIC (Jan. 30, 2022, 6:45 PM), <https://www.techrepublic.com/article/how-to-create-a-privacy-policy-that-protects-your-company-and-your-customers/>.

TRADEMARKS AND SPAM

What is Trademark spam?

Trademark spam is an unavoidable and unfortunate result of the knowledge an applicant provides the USPTO (United States Patent and Trademark Office) in an application, which is publically available. This includes, among other information, the name, address, and email of the party applying for the mark. As a result, spammers have all of the knowledge they have to send fake trademark solicitations that appear to be legitimate. The USPTO is fully conscious of trademark spam, but despite its efforts, applicants and registrants still be victimized by spammers.¹⁷

What does trademark spam look like?

Trademark spam generally comes within the sort of official-looking correspondence—letters or email—that either “requires” the recipient to pay certain fees, or strongly “recommends” that the recipient use a specific company to facilitate the trademark registration process. Within the first instance, some fees are completely fabricated, while other fees purport to be real fees, but are grossly inflated by the spammer. Here may be a list of the particular USPTOtrademark fees and their correct amounts. Within the second instance, spammers offer their services to facilitate the registration process, something only licensed attorneys are allowed to try to.

FAKE ACCOUNTS AND SPAM

Spammers create fake profiles for variety of nefarious purposes. Sometimes they're just how to succeed in users internally on a social networking site. This is often somewhat almost like the way email spam works - the purpose is to send your users messages or friend invites and trick them into following a link, making a sale, or downloading malware by sending a fake or low-quality proposition.¹⁸

Spammers also are using spam profiles so far another avenue to get web spam on otherwise good domains. They scour the online for opportunities to urge their links, redirects, and malware to users. They use your site because it's no cost to them and that they hope to

¹⁷ Tim Lince, *Scams and spam: USPTO users face epidemic of spurious communications*, WORLD TRADEMARK REVIEW (Jan. 30, 2022, 6:55 PM), <https://www.worldtrademarkreview.com/brand-management/scams-and-spam-uspto-users-face-epidemic-of-spurious-communications>

¹⁸ Google Search Central Blog, *Spam2.0: Fake user accounts and spam profiles*, GOOGLE DEVELOPERS (Jan. 30, 2022, 6:58 PM), <https://developers.google.com/search/blog/2009/06/spam20-fake-user-accounts-and-spam>.

piggyback off your good reputation.

Case Study: Fake Twitter Accounts – BP Global / Netflix / Coventry First

"Catastrophe may be a strong word," Twitter user @BPGlobalPR said during a May 23 post. "Let's all comply with call it a whoopsie daisy." The tweet, of course, mentioned British Petroleum's massive oil spill within the Gulf of Mexico.¹⁹

Since May 19 a veritable endless supply of similarly sardonic tweets has been streaming from the fake Twitter account holder, whose parody of a lackadaisical BP PR rep has garnered a cult Internet following. Within the 100-plus days since BP's Deepwater Horizon oil rig explosion, the as-yet-to-be-revealed tweeter has created almost the maximum amount buzz as ex-CEO Tony Hayward's loose lips. @BPGlobalPR has quite 180,000 followers--almost 10 times the amount for BP's real Twitter PR account, @BP_America. BP didn't answer an invitation for comment. @BPGlobalPR is far and away the foremost visible fake Twitter account, but by no means is it alone. There is a plethora of online social commentators masked as tongue-in-cheek versions of powerful CEOs and public figures on Twitter.

The foremost Notorious Fake Twitter Accounts BP, however, did attempt to stifle the fake Twitterer's momentum. In June the oil giant asked Twitter to remind the satirist about Twitter's policy, which needs users to incorporate a press release on their bio page that distinguishes them from the person or entity they're parodying. @BPGlobalPR's response was in step with its usual tenor: "We aren't related to Beyond Petroleum, the corporate that has been destroying the Gulf of Mexico for 52 days," the bio stated at the time it had been posted.

"Satire and parody are a part of literature as long as there's been literature," said Twitter spokesman Sean Garrett.

The fake follower economy remains flourishing and remains the scourge of social media. The study showed that not only is that the fake follower economy flourishing, but it's actually growing.²⁰

¹⁹ Mike Isaac, *The Most Notorious Fake Twitter Accounts*, FORBES (2010), (Jan. 30, 2022, 7:05 PM), <https://www.forbes.com/2010/08/02/bp-angelina-jolie-technology-twitter.html?sh=1190fd32da12>.

²⁰ Greg Finn, *Study: Fake Twitter Follower Market Is Still Thriving Thanks To New Spam Tactics*, MARTECH (Jan. 30, 2022, 7:15 PM), <https://martech.org/study-fake-twitter-follower-market-is-still-thriving-thanks-to-new->

INFRINGEMENT: What Constitutes Infringement?

Trademark Infringement is that the issue of the instant and has attracted with it the laws related not only to property but also Tech Laws, Media Laws, Sports Laws, Marketing Laws etc. The Trademark Legal framework has got to be a mixture of National and International Laws and shall add consonance with Trans-border Laws where the Judgments from various countries getting used as citations shall act as a guide.

PATEL FIELD MARSHAL AGENCIES LTD. V P.M. DIESELS LTD²¹– The Field Marshal Case

The case where the SC was to adjudicate upon the Sections 46, 56, 107 and 111 of the Trade and Merchandise Marks Act of 1958 for infringement of the Registered Trademark “FIELD MARSHAL” owned by P.M. Diesels Ltd governed by the said Act where Section 46 says that if a trademark is registered without good intentions of using it or and therefore the same has not been used continuously for five years, it are often far away from the register and Section 56 empowers the Tribunal to cancel the Registration of the Trademark if it's proved that any provisions are contravened or any condition left unfulfilled on the idea of which the Registration was granted.

Section 107 says that the appliance to challenge the Registered Trademark lays to supreme court and to not the Registrar and Section 111 mandates the stay of suit if the appliance for rectification is pending before the Registrar or supreme court for 3 months before commencement or if commenced, then for 3 months before the Facts are framed by the Court. On basis of the above mentioned sections, the Court had to make a decision whether the Rectification proceedings instituted by the Appellant on the Respondents were acceptable or not when the Appellants contended that the rectification rights lies with the aggrieved person and such rights are granted by the court.

The Supreme Court here favored the Respondents and held that the questions of validity of

spam-tactics/.

²¹ Patel Field Marshal Agencies Ltd. vs. P.M. Diesels Ltd., AIR 2017 SCC 1388.

registration are to be decided by the Tribunal and not the Civil Court also because the decision of the Tribunal are going to be binding on the Civil Court. It had been also held that if the parties don't approach the Tribunal for rectification after the order of the Civil Court then the parties relinquish the plea to rectification and therefore the intent of Section 111 was clarified by the Apex Court saying that by enacting such section 111 legislature seeks to deal with the question of invalidity within the first instance and once the plea of rectification has been raised and settled with, the suit shall proceed with other issues.

Monitor marketplace for infringers:

Trademark owners should diligently monitor the marketplace for uses of comparable trademarks and new applications for confusingly similar trademarks. Several legal cases have held that you simply may lose your trademark rights unless you're taking reasonable efforts to guard your trademark and enforce your rights.²²

Remember that it's the responsibility of the trademark owner, not the govt, to prevent third party infringers. A monitor program should include periodic reviews of trademark databases, journals and other relevant publications. Regular reviews are important because there's a narrow window of opportunity to oppose confusingly similar applications. It's also prudent to watch non-registered trademarks by examining business journals, business registries, publications and newspapers. Such reviews should consider not only exact matches, but also "sound-alikes" and variants. Legal counsel can assist you in developing an efficient monitor program. Trademark owners who become conscious of an infringing mark should take action or risk losing their trademark rights.

The **doctrine of estoppel** may operate to stop a trademark owner from claiming infringement where the owner delays for an unreasonably long period before initiating enforcement procedures. The infringer could argue that the owner's actions, or lack thereof, indicated tacit approval of the infringer's use of the trademark.

If you think that someone could also be infringing your trademark, you ought to consult your legal advisor regarding the simplest course of action. Often, a cease and desist letter may suffice. However, you ought to not approach potential infringers with cease and desist letters until you or your legal counsel has ascertained that your rights to the mark take precedence over theirs. It's going to even be necessary to follow up with a action which can be supported

²² *Online Brand Protection*, KLEMCHUK LLP (Jan. 30, 2022, 7:25 PM), <https://www.klemchuk.com/online-brand-protection>.

trademark infringement, depreciation of the worth of the goodwill within the mark, and/or passing off.

BRANDS AND PARODY

With the increase of YouTube, Instagram, Amazon Prime, Netflix etc., content creators now have a wider platform to urge discovered and showcase their talents. One particular concept doing the rounds and amusing audiences, is PARODY.

Parody may be a deliberate exaggeration of a specific situation, concept, person etc., finished comic effect. Parodies target anyone and anything; from popular celebrities to movies to politicians to brands etc. most of the people would have encountered sardonic adaptations of varied well-known brands. But from **a legal perspective – can an equivalent be causing trademark infringement?** In today's commercial scenario, trademarks became a crucial marketing tool and occupy a big place within the minds of consumers. Likewise, parodies of popular brands also are being increasingly used for humor.²³

A major factor behind parody/spoof/satire/lampoon/meme etc. is that the general public is so conversant in the brand that it understands the reference being made. Hence, a mark must be well-known to the audience so as for it to be utilized in a parody. In fact, it can even be argued that a parody is propagating a specific brand. The same, however, can concern owners when their name is portrayed negatively. Therefore, the question is – **when does a parody constitute infringement and when does it not?**

In India, the “defence of parody” was first taken in *Tata Sons Limited vs. Greenpeace International and Ors.*,²⁴ and till date remains the sole case which deeply analyses the Trademark law for such a defence. However, the courts abroad have vastly considered the mutilation of brand name names during a number of pronouncements. Intent, purpose and effect: Parodies of brand name names are very on the brink of the particular brand names, but the creative tweaking also makes sufficiently distinctive from the first. Something meant to tickle the crazy bone shouldn't, in essence, be taken to offend the legal rights of another.

²³ Chadha and Chadha Intellectual Property Law Firm, *Brand Name Parody: Does it mean infringement?*, LEXOLOGY (Jan. 30, 2022, 7:35 PM), <https://www.lexology.com/library/detail.aspx?g=fd17ce8d-577a-496c-8099-23abc38d9c98>.

²⁴ *Tata Sons Limited vs. Greenpeace International and Ors.*, 178 (2011) DLT 705 (“GREENPEACE”).

Therefore, the intention of use, its purpose and therefore the effect of such use within the minds of the general public plays a pivotal role in determining infringement in such cases. A lucid explanation of an equivalent was provided in *Tata Sons Limited vs. Greenpeace International and Ors.*, as *“The relationship between the trademark and therefore the parody is that if the parody doesn't take enough from the first trademark, the audience won't be ready to recognize the trademark and thus not be ready to understand the humour. Conversely, if the parody takes an excessive amount of it might be considered infringing, based upon the very fact that there's an excessive amount of theft and insufficient originality, no matter how funny the parody is.”*

Section 29(4) and (5) of the Trademarks Act, 1999 mandates that the utilization of the infringing mark must be within the course of the trade and in reference to business. The Indian Courts have relied on variety of foreign precedents in their rulings and held that so as to constitute infringement, the impugned mark must be used for a billboard purpose. Even within the case cited above (*supra*), the court has held that a breach of Section 29(4) would happen when another commercial/entrepreneurial body is exploiting an equivalent trademark.

Even in *Blackwood & sons v A.N. Parasuraman*,²⁵ the Court held that the motive to compete must be necessary so as to constitute the “dealing unfair.” The purpose of Trademark Law is to safeguard the interests of trademark owners against unauthorized use by entities attempting to free-ride on their reputation and goodwill also on protect the consumers from confusion and deception on the origin of the brand.

The aim of parody would be ineffective if consumers didn't make an association with the brand. However, it might be similarly ineffective if consumers considered the brand to be a politician product of the first brand owner. In cases where the parody is recognized as a parody, it's unlikely that buyers are going to be misled about the origin of the goods/services being provided. Elucidated through the discussions of varied judicial precedents in *Tata Sons Limited vs. Greenpeace International and Ors.*,²⁶ the difficulty herein isn't the limitation of 1 right, but analyzing them in their specific context.

The balancing of interest must be supported the text concerned, (whether visual, verbal or both), should be analysed in terms of its significance and therefore the impact it had (or was likely to have) and the actual setting during which it had been communicated. Therefore, the impact of the harm done by the parody to the property interests of the trademark owner shouldn't overshadow the free speech interests involved. Hence, the question is **whether or**

²⁵ *Blackwood and Sons Ltd. and Ors. vs. A.N. Parasuraman and Ors.*, AIR 1959 Mad410.

²⁶ *GREENPEACE*, *supra* note 23.

not the character of the parody is primarily, communicative or commercial?

Enforcement – when to act?

It is to be borne in mind that every case is different supported its facts and circumstances. Humour has its own place in society, but a parody has got to confirm that it doesn't take more from the first than necessary. Therefore, choose whether a parody constitutes trademark infringement or not, the courts have also considered the particular commercial nature of the parody. If the parody doesn't shall ride upon the name of another for commercial gain or within the course of trade, no infringement has occurred.

Whereas, if the character of the parody is such it's likely to misrepresent, deceive and cause confusion among the general public or is employed for a billboard purpose, the parody is susceptible to termed an infringement of trademark. The courts have time and again adopted a really lenient view towards protecting parody of brands for the aim of creativity and artistic expression. But when parodies end in actual confusion among the general public and free-riding on the trademark owner's reputation, such protection isn't afforded to the Defendants.

CONSUMER COMPLAINTS AND 'CYBER GRIPING'

Cyber griping involves one party establishing an internet site for the aim of publishing complaints about or criticism of another party (the "target"). The website's name often incorporates the target's name or trademark, and a pejorative suffix, like "sucks" or "ripoff."

Case Study: Mayflower Transit, LLC v. Prince

In *Mayflower Transit, L.L.C. v. Prince*,²⁷ 314 F. Supp. 2d 362 (D.N.J. 2004), LLC ("Mayflower") was an interstate mover. With few exceptions, Mayflower wasn't licensed to provide intrastate moving services. Mayflower's various agents, however, could and did provide intrastate moving services using the MAYFLOWER service mark with Mayflower's permission.

Brett Prince ("Prince"), allegedly by referral from a Mayflower sales manager, engaged one among Mayflower's agents, Lincoln Storage Services ("Lincoln"), to supply moving and storage services for a move wholly within the State of latest Jersey. The truck and boxes for, and a few of the paperwork related to, the move bore the MAYFLOWER trademark. While

²⁷ *Mayflower Transit, L.L.C. v. Prince*, 314 F. Supp. 2d 362 (D.N.J. 2004).

Prince's possessions were stored in one among Lincoln's trucks overnight, many of them were stolen. Prince sued Lincoln and its insurance carrier in state court, which matter ultimately was settled. After the unfortunate moving incident, Prince registered the name and posted an internet site under this name containing content critical of Mayflower, Lincoln, and their businesses.

Later, Prince registered the domain names and containing identical critical content. At some point thereafter, Prince discontinued using the domain name, but continued using the latter two domain names for his disparaging internet site content. In ensuing communications between Mayflower and Prince, Mayflower claimed it had no responsibility for the move conducted by Lincoln. Prince responded that he wouldn't change his internet site content until he received a satisfactory settlement from Mayflower.

Mayflower sued Prince, alleging violations of the ACPA, trademark dilution, and state law claims for libel and trade libel. The parties both moved for partial summary judgment on Mayflower's ACPA and libel claims. The court granted Prince's motion on Mayflower's ACPA claim, but denied his motion regarding Mayflower's state law libel claims due to unresolved problems with material fact. The court denied Mayflower's motion in its entirety.

The court found that the primary two prongs of Mayflower's ACPA claim were easily met because:

1. Their registered trademark was distinctive and
2. Defendant's "mayflowervanline.com" was confusingly almost like Plaintiff's Mayflower trademark.

However, when the court was examining the third prong of Plaintiff's ACPA claim, whether Defendant registered its name with the bad faith intent to take advantage of Plaintiff, the court found Defendant had a real noncommercial use of the mark, therefore, the ACPA claim failed. "Defendant's motive for registering the disputed names was to precise his customer dissatisfaction through the medium of the web."

The court found in favor of Mayflower on the primary two of the three prongs of its ACPA claim. Central to the court's decision in Prince's favor was that his use of the name was non-commercial and for the aim of critical commentary that Prince had reasonable grounds to believe was lawful. Moreover, nothing contained on Prince's internet site nor any of his other accused actions (including his refusal to vary his internet site content until he obtained a

satisfactory settlement) showed that he registered the name for the aim of selling it to Mayflower or anyone else. Additionally, none of Prince's internet sites contained advertising or commercial offers to sell anything for a profit.

This is clearly a matter of cyber griping, i.e., one party establishing an internet site for the aim of publishing complaints about or criticism of another party

DOMAIN NAMES AND CYBERSQUATTING: THE EUDRP AND THE INDRP

What is a website name and what purpose does it serve?

The Hon'ble court of Bombay, within the recent case of Hindustan Unilever Limited v Endurance Domains Technology LLP & Ors.²⁸ observed that: *"A name is just an easy-to-remember or mnemonic for an online protocol address. The IP address may be a string of numbers in four sets separated by a period."* Being the address for internet communication that identifies a selected website, a website name may be a kind of 'business identifier', especially within the context of larger chunk of economic activity happening online instead of in brick and mortar stores. Domain names are regulated by name registrars, from whom one can buy a specific name and acquire an address to their website.

Inter-Relationship Between Domain Names & Trademarks

Domain names came into existence as users needed an address while communicating within the virtual world of internet. As businesses started augmenting their online presence, domain names began to be reckoned as unique, easy to recollect and a differentiating factor on worldwide web. Since domain names are the primary impression for any business in a web environment, they render recognition to businesses and makes and function a web trademark.

In the landmark case of Satyam Infoway Ltd v. Sifynet Solutions Pvt. Ltd.,²⁹ the Hon'ble Supreme Court laid down that, *"A name is straightforward to recollect and use, and is chosen as an instrument of economic enterprise not only because it facilitates the power of consumers to navigate the web to seek out websites they're trying to find, but also at an equivalent time, serves to spot and distinguish the business itself, or its goods or services, and to specify its corresponding online Internet location. Consequently a website name as an address must, necessarily, be peculiar and unique and where a website name is employed in reference to a*

²⁸ Hindustan Unilever Limited vs. Endurance Domains Technology LLP & Ors., (2020) SCC OnLine Bom 809.

²⁹ Satyam Infoway Ltd vs. Sifynet Solutions Pvt. Ltd, (2004) 6 SCC 145.

business, the worth of maintaining an exclusive identity becomes critical."

Therefore, it won't be an exaggeration to mention that the aim a trademark serves during a physical environment; name serve during a virtual commercial environment – identification, differentiation and creation of a brand identity. Thus the Hon'ble Supreme Court recognized that a website name is of critical importance to a commercial enterprise because it is that the means of navigating the web by potential consumers/customers.

The Satyam Infoway case (supra) recognised how the web developed from a mere means of communication to a mode of carrying on business activity, and also addressed a crucial question that arose - **whether internet domain names are recognisable as other intellectual properties like trademark?**

The Hon'ble Supreme Court drew a contrast between trademarks and domain names, observing that an outsized number of trademarks containing an equivalent name can comfortably co-exist, as they're related to different products and should belong to businesses in several jurisdictions etc. However, with reference to domain names, their distinctive nature provides global exclusivity, and hence is far more valuable. Consumers looking up for a specific site on the web are likely to first guess the name, which has further enhanced the worth of domain names.

The inter-relationship between trademark and domain names was also outlined by the Hon'ble Supreme Court within the matter Arun Jaitley v. Network Solutions Private Limited and Ors.³⁰

"The name is typically an address given to the web site in order that the person meaning to visit an equivalent may visit the web site of the identified person. This function of giving names to the addresses of the web site has undergone magnificent change whereby the businesses, firms, eminent individuals are ready to name the online addresses after their own names and/or trade mark. This performs dual functions, firstly, the name doesn't merely remain as an address but rather performs the function of a trade mark because the prospective customers or other known persons visit the webpage and are ready to immediately connect with the source and identify an equivalent with the actual company or the individual."

³⁰ Arun Jaitley vs. Network Solutions Private Limited and Ors., 2011 SCC OnLine Del 2660.

What Is Cybersquatting?

While trademarks granted protection against unfair use by another party, once a proprietor/owner registered them, domain names could simply be purchased (without the need of the registration). This was a kind of 'first come, first served' concept, which also resulted in several disputes concerning the wrongful or fraudulent use of trademarks as domain names. However, not all name disputes are cybersquatting.

Cybersquatting may be a one among the precise sorts of name disputes that arises when a celebration registers domain names without the intention of using them. Propelled by malafide intentions, cybersquatting is that the most rampant quite name dispute whereby a celebration, usually completely unrelated to a trademark, business name or brand name, obtains registration of a website name identical or almost like such trademark, business name or brand name.

Domain names are often obtained by anyone with none prior approval from any authority with reference to pre-existing property or proprietary rights over trademark, business name or brand name. Obtaining a website name doesn't require any proof of ownership of the trademark or brand name.

This non-alignment between operational aspects of obtaining a website name and registration procedure for trademarks becomes the idea of exploitation and cybersquatting. Persons resorting to cybersquatting obtain domain names identical/similar to trademarks, business names, trade names and sometime names of famous celebrities or personalities and thereafter either deal in sale of said names for exorbitant amounts or resort to unfair online activity to divert the web traffic from genuine websites to their websites.

In the Arun Jaitley case (supra) mentioned above, the Hon'ble SC held the following: *"Cybersquatting may be a crime against the laws and regulations of cyber law. The registering, or employing a name with mala fide intent to form profit belonging to somebody else . The cyber squatter then offers to sell the domain to the person or company who owns a trademark contained within the name at an inflated price. Cyber squatters invite prices much more than that at which they purchased it. Some cyber squatters put up derogatory remarks about the person to shop for the domain from them to compel the innocent person with none fault."*

Recognising the necessity to ring-fence honest users from those that are slightly better versed with technology, but plan to profiteer from goodwill of others, the Hon'ble Court realised its responsibility to accord protection against cybersquatting. Accordingly, the Hon'ble Court observed: *"Therefore, it becomes incumbent to guard the domain names in order that the identified names of companies and individuals which are distinct at the market place might not go at the hands of people who are nowhere concerned with those names and have obtained them simply because they're better conversant with the pc techniques and usage of the web. To simplify, so as to stop the cybersquatting or trafficking or trading in domain names or the marks, the trade mark law has been stretched to the extent that it's going to cover the sector of internet and domain names could also be protected a bit like the trademarks."*

Nature of Reliefs Available In Cybersquatting Disputes

As the world shrinks to a worldwide village, where businesses transcend boundaries and transact overseas from computers screens and handheld devices, the menace of cybersquatting could definitely put a period to the dreams of these who fall prey to cyber squatters. On several occasions, e-commerce companies are ransomed into paying hefty amounts of cash to guard their trademark (and goodwill riding on it!).

Domain names aren't 'owned', they're registered for a fee and for a specified time. The method of registration is fairly simple and one has got to merely search for availability of a mixture of words, which is then matched to a desired top-level or other domain (.in, .com, .net, etc). The method is automated and requires no manual intervention. There's no human element involved in overseeing or assessing the legitimacy of any chosen name, which is probably the rationale for several name disputes and cybersquatting.

Therefore, there's no preventive mechanism that stops or blocks a website name from being registered (unless there's an order of the court or government thereto effect). An aggrieved party can only seek resolution of conflict, once the name has been registered. This was discussed at length in Hindustan Unilever Limited case (supra), wherein the Hon'ble Bombay court discussed the following: *"Any name Registrar can always suspend a website that's registered. But the whole process of registration itself is entirely automated and machine-driven. No name registrar can put any domain names on a black list or a block list. The notion that name registrar's have an individual or a team of persons scanning and checking every name application betrays a wholesale lack of understanding of how name registration*

actually works. If a user wanted to register, say, chroniclesofwastedtime.com, there's no individual at any name registrar to question, to ask why, rebuke or anything. If the name is free, the applicant can take it to registration. That's all there's thereto. That registration will continue until suspension or expiry. A 'continued suspension' is therefore impossible or practicable a minimum of within the current technology."

In the Indian context, the trade mark law protects names from its inception. Even in earlier trade mark Act of 1958, the names got ample protection on the principles of passing off. In the Arun Jaitley case mentioned above, the Hon'ble SC discussed the law of passing off applicable to trade names and held that: *"Likewise, the definition of trade mark includes the name being an inclusive definition was also extended to incorporate domain names. This was done so on give ample protection to domain names because the domain names weren't included as a selected subject under the trade mark law regime. Therefore, the recourse was taken by expansive interpretation of the definition of the trade mark which is sought to incorporate domain names in order that the law of passing off may sufficiently subsume an equivalent."*

Internationally, domain names are regulated through WIPO (World property Organization) and ICANN (The Internet Corporation for Assigned Names and Numbers). WIPO, in its endeavour to market the protection, dissemination and use of property throughout the planet, developed forums for the event and implementation of property policies internationally, through treaties among the member states. WIPO has found out a system of registration of domain names with accredited registrars and has also devised the Uniform name Disputes Resolution Policy (UDNDR Policy). The web Corporation for Assigned Names and Numbers (ICANN) adopted UDNDR Policy, the supported recommendations made by WIPO. Under this policy, a trademark holder can initiate a proceeding against a website name registrant, if he considers that the registration of such name infringes its trademark.

Therefore, while the registrations still be provided on a 'first come first served' basis, name disputes with reference to gTLDs (Generic top-level domains) are subject to the Uniform name Dispute Resolution Policy (UDNDR Policy). Further ccTLD (country code top-level domains) disputes are subject to country specific dispute resolution policy.

In India, the disputes with reference to '.in' or '.co.in' extensions are subject to INDRP (.IN Domain Dispute Resolution Policy). In such cases, a complainant can initiate a website name

action with .in registry, which operates under the National Internet Exchange of India (NIXI), an organisation established for regulation of traffic exchange between internet service providers. The .in registry appoints an arbitrator selected from a panel maintained by NIXI for resolving the dispute.

PLATFORM-SPECIFIC TRADEMARK ENFORCEMENT MECHANISMS

The Trademarks protection within the light of TRIPS Agreement:

TRIPS stated general principles of procedure for the acquisition and sanction of commercial property rights and Trademarks that has got to be enforced by its members. Under parts III and IV of TRIPS, member states must introduce procedures into their national legislation which will allow an efficient action against any infringement of property rights. Member states also must introduce means designed to stop any longer infringement of the trademarks and are obligated to enforce both of the above measures *“so on avoid the creation of barriers to legitimate trade and to supply for safeguards against their abuse. Furthermore, procedures and formalities required for the acquisition of rights must be reasonable and equitable and should not be “unnecessarily complicated and dear,”* nor include unreasonable or unjustified delays.

Part III, sections 2-5 of TRIPS provide a more detailed list of procedures and criminal, civil, and administrative corrective measures. In cases of infringement, rights holders may seek enforcement from judicial, administrative, and customs authorities, through measures like injunctions and penal sanctions, or through the confiscation or destruction of counterfeit goods. If infringement is threatening, the owner may demand provisional measures like suspension of the products from circulation. Each member state or group of states must organize protection of trademarks to be in compliance not only with these general principles but also with the principles specific to trademarks.³¹

The Trademarks protection within the light of UAE Federal Law No. (37) of 1992, amended by Law No. (8) of 2002:

The first way of protection given to the trademark through the UAE Trademarks Law is what

³¹ Mahmood Hussain Law Firm, *The Protection Of Trademarks Including The Mechanism Of Preventive Measures By Its Owner*, THE LEGAL 500 (2019), (Jan. 30, 2022, 7:45 PM), <https://www.legal500.com/developments/thought-leadership/the-protection-of-trademarks-including-the-mechanism-of-preventive-measures-by-its-owner/>.

has been acknowledged by Article 17 which states that *“Any one that registers a mark shall be deemed its sole owner. The ownership of such mark might not be disputed if the person, who registers it, uses it uninterruptedly for minimum of (5) years from the date of registration without an action being lodged against him ruling for its validity. The owner of a registered trademark may prevent others from employing a similar or identical trademark, to differentiate products or services that are identical, similar or correlated that the mark has been registered, in such how that confuses the consumers.”*

Furthermore, Article 21 states that without prejudice to the supply of Article (17), the Ministry and any concerned person shall have the proper to request a judgement be passed for striking off a trademark registered without right. during this regard, the Law has confers a protection bases on the “prior use “of the Trademark consistent with the aforementioned circumstances in Article 17 although that article 21 doesn't specify the standards to work out when a mark is to be considered registered “wrongly” and there's accordingly more scope in cancellation proceedings to argue for the removal of a trademark from the register supported “prior use”. In the case of any infringements to the rights of Trademarks, the UAE Trademarks Law has determined the conducts that shall be penalized within the light of the protection of the Trademarks as in Articles 37, 38, 39, 40 which diverse range of confinement, fine and therefore the Trademark owner to hunt for judicial compensation.

Twitter:³²

The trademark enforcement mechanism given in Twitter’s trademark policy is as under:

“What is in violation of this policy?

Using another’s trademark in a way that may mislead or confuse people about your affiliation may be a violation of our trademark policy.

Who can report violations of this policy?

Twitter only investigates requests that are submitted by the trademark holder or their authorized representative e.g., a legal representative or other representative for a brand.

How can I report violations of this policy?

You can submit a trademark report through our [trademark report form](#). Please provide all the

³² Twitter Help, *Twitter's trademark policy*, TWITTER (Jan. 30, 2022, 7:57 PM), <https://help.twitter.com/en/rules-and-policies/twitter-trademark-policy>.

information requested in the form. If you submit an incomplete report, we'll need to follow up about the missing information. Please note that this will result in a delay in processing your report.”

LinkedIn:³³

The trademark enforcement mechanism given in LinkedIn's trademark policy is as under:

“If you in good faith believe that content posted by a member on our website infringes your trademark rights, please complete the Notice of [Trademark Infringement Form](#).

If you believe this claim was submitted in error, you can [submit a Counter-Notice form](#).

Instructions for Reporting Trademark Infringement

This Notice should be used if you believe someone on LinkedIn is infringing your trademark rights. **Please note that a copy of your trademark registration must be provided using the 'Add an attachment' option below in order to process your claim, otherwise your claim may be summarily denied.**

Instructions for Reporting Other Matters

If you are not reporting a trademark infringement, please see the following below for additional assistance:

If you want to become admin of a LinkedIn Company Page or claim an unclaimed LinkedIn Company Page, please click [here](#)

To report Fake Profiles, please click [here](#)

To report Inaccurate Information on another member's profile such as employment or education, please click [here](#)

To report inappropriate or offensive content in your LinkedIn Feed, please click [here](#).”

Facebook:³⁴

The trademark enforcement mechanism given in Facebook's trademark policy is as under:

“Facebook can't adjudicate disputes between third parties, and so we wouldn't be in a position to act on trademark reports that require an in-depth trademark analysis or a real-world dispute outside Facebook. In these situations, rather than contacting Facebook, you may want to

³³ LinkedIn Help, *LinkedIn's Trademark Policy*, LINKEDIN (Jan. 30, 2022, 8:19 PM), <https://www.linkedin.com/help/linkedin/answer/30365/linkedin-s-trademark-policy?lang=en>.

³⁴ Help Centre, *Trademark*, FACEBOOK (Jan. 30, 2022, 8:25 PM), <https://www.facebook.com/help/507663689427413>.

contact the party that you believe is infringing your rights directly, or seek any resolution in court or by other judicial means. If you're sure you want to report content on Facebook that you believe infringes your trademark, you can do so by completing [this form](#).

Please note that submitting a claim of trademark infringement is a serious matter with potential legal consequences. Before you submit a report, you may want to send a message to the person who posted the content and resolve the issue with them directly. You may be able to resolve the issue without contacting Facebook.

Remember, only the trademark owner or their authorised representative may file a report of trademark infringement. If you believe something on Facebook infringes someone else's trademark, you may want to let the rights owner know.

Tools Facebook provides to protect one's IPR:

If you own a registered trademark, you may be eligible to use Brand Rights Protection. This tool allows you to identify trademark violations, counterfeit products and copyright infringement across many of our platforms. Learn more about [Brand Rights Protection](#), including how to apply.”

CONCLUSION

The trademark is a crucial guide for the buyer to spot the source and excellence of the products and services and thus facilitate the shopping process. Trademark is subject to the risks of counterfeiting and cybersquatting, which makes countries strive to adopt a protection system and preventive measures to guard trademark from infringement by issuing national legal texts and concluding international treaties to broadcast the sentences of the penalties imposed on the varied misdemeanours resulted in due course, these penalties could also be civil or criminal.

The key essence of cybersquatting is 'bad faith registration' of an owner's rights during a name, brand name or a trademark etc. as a website name. If the name one intends to use appears to be already registered, one may contact the name registrant and ascertain if they're curious about selling the name at a mutually agreeable price. However, if an equivalent doesn't fructify or the registrant resorts to cybersquatting by quoting exorbitant consideration to sell the name, appropriate relief could also be sought from the court. If the registration pertains to a generic top-level domain (gTLD) or a rustic code top-level domain (ccTLD), the aggrieved party can

also initiate a proceeding under the UDNDRP or INDRP because the case could also be and seek to resolve the dispute by way of arbitration.

Trademark infringements remain a phenomenon that negatively affects national products and is additionally exposing economic safety and security of the country and the mechanisms mentioned above need to be taken care of an individual as well as company level.
