



COMPARATIVE ANALYSIS REGISTRATION OF NON-TRADITIONAL TRADEMARKS IN UZBEKISTAN AND SOME FOREIGN COUNTRIES (LEGISLATION AND PRACTICE REVISION)

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Article history:	Abstract:
Received: May 30 th 2021 Accepted: June 26 th 2021 Published: July 28 th 2021	In this article it will be analyze same non-traditional marks by the legislation of foreign countries.
Keywords: Trademark, non-traditional marks, personal names, designs, letters, numerals, sounds, the shape of goods or of their packaging, color combinations, TRIPS, UK, USA, EC Directive	

A trademark is a type of industrial property is distinct from other forms of intellectual property, which is used to distinguish a business or services. Conventionally, a traditional trademark comprises a name, word, phrase, logo, symbol, design, image or a combination of these elements. However, there are certain other non-traditional trademarks which have gained prominence in recent times and include sound marks, odour marks, colour marks, shapes and taste marks. Afterwards we will look through some of non-traditional marks as a regulation by the legislative some countries for regulation trade marks.

In many countries such as USA, UK, South Korea, Uzbekistan, Italia, Australia and other countries for regulation of trade marks prescribed legislative regulation non-traditional marks. By the legislation of trademark law of Italia Chapter I Art. 16 prescribed to registration non-traditional marks as a trademark by the article any new sign which can be represented graphically, particularly words, including personal names, designs, letters, numerals, sounds, the shape of goods or of their packaging, color combinations or tonalities, provided that they are capable of distinguishing the goods or services of one enterprise from those of other enterprises may be registered as a trademark. In Australia by the law of Trade Marks Act Part 2 (1) legislative protection of non-traditional marks prescribed in aspect of packaging, shape, colour, sound or scent. In US, the Lanham Act's definition of "trademark" encompasses non-traditional marks by not excluding them. It includes any word, name, symbol, or device, or any combination thereof that identifies and distinguishes the goods and services of one person from those of another and indicates their source. The Supreme Court has made it obvious that trademark might include anything that is capable of having some meaning. On the other hand, the UK Trademark Act in Section 1(1) defines trademark as

any sign capable of distinguishing goods and services of one undertaking from that other undertakings. A trademark may in particular consist of words, designs, letters, numerals, or shape of other goods or packaging.

Thus unlike the US position, there is a restriction in UK as to what could possible constitute a trademark [1]. The Article 15.1 of TRIPS Agreement makes a requirement that any sign or combination of signs can be registered as a trademark although it might required that the mark be visually perceptible. Under EU law, a sign must capable of being presented graphically in addition to which it must be clear, precise, self-contained, easily, accessible, intelligible, durable, objective and not deprive the trade or the public of signs that the directive or regulation implies should be free to all [2]. In Germany by the Trademark law 3(1) prescribed as a any signs, particularly words, including personal names, designs, letters, numerals, sound marks, three-dimensional configurations, including the shape of goods or their wrapping as well as other packaging, including colors and combinations of colors, which are capable of distinguishing the goods or services of one undertaking from those of other undertakings may be protected as trade marks. In India, Section 2(1) (zb) of the Indian Trademarks Act specifies that any mark which is distinctive i.e. capable of distinguishing goods and services of one undertaking from another, and capable of being represented graphically can be a trademark.

Registration of a trademark helps to instill consumer and prevent confusion about the source of products sold under a trademark. Consumers rely on trademarks in most cases it is difficult to inspect a product quickly and cheaply to determine its quality [3].



The greatest need for using non-traditional trademarks arises because market-savvy companies want to design and advertise their products in such a manner that appeal to the consumer's aesthetic sense. However, while a non-traditional mark also entitled to protection as much as a conventional trademark, there are certain underlying problems with the nature of such marks that impede the registration process. According to Article 2 of the European Directive and as under the UK trademarks Act, 1994, the three main requirements for being registered as a trademark are as follows: [4]

The trademark should be a sign or anything that can convey information.

The sign should be capable of distinguishing products or services or one undertaking from that of another. This is clearly a requirement of distinctiveness of trademarks.

The trademark is capable of graphical representation.

Graphical representation of a trademark is undoubtedly an administrative for the purposes of precise identification in the trademarks registry. The requirement of graphical representation is thus helpful both to the traders and the people in the Registry office [5]. Obviously, a clear and precise graphical representations ensures that all the rights and liabilities established under the Act can be availed of [6]. Article 15 of the TRIPS, 1994 however deviates from the criteria of graphical perceptibility on the other hand.

The USA Patents and Trademarks Office (USPTO) have stated that any non-traditional can be registered as long as it distinguishes the source of the product and is not functional or descriptive [7], implying that a non-traditional trademark cannot perform a utilitarian function. With respect to functionality of a given trademark, a few guidelines have been laid down by the USPTO.

Let's talk some of the non-traditional trademarks for example smell marks. Even if the product would allow consumers to access the scent, it is highly unlikely that they would use their sense of smell in order to decide which product to purchase. If the product is not selected because of its scent, its identification and the link between the scent and the manufacturer, then it fails to acquire the distinctive character necessary for it to qualify as a trademark.

It is necessary to underline smell is composed of molecules created by a stimulus, which is then detected by the human body. The complexity of the creation of the stimulus, which depends on the very molecular structures and chemical bonds involved in its development, signifies that each scent is discretely unique. In order to be detected, the molecules of a scent must get in actual contact with the potential

consumer, and the further in space the latter is from the scent, the more difficult will be the detection. There is very strong evidence that most people simply cannot recognise more than sixteen smells [8]. Must pay attention in the markets selling products under the smell marks it will be difficult to identify from other products.

Smell trademark is registrable in EU in one condition if the graphically representation of the mark is self-contained, durable, objective, intelligible and accessible. By the legislation of Trademark Act of Great Britain understands as a trade mark "a designation which can distinguish the goods and services" [9]. In this Trademark Act does not contain any restriction concerning a kind of a trade mark which protection can be presented. In the case of R v John Lewis, the UK Court refused an application for 'the smell, aroma or essence of cinnamon' as a trademark for the furniture as the verbal description of a smell was not enough to make a graphical representation. But the case would have been done with reference to certain standards [10]. Another example the smell of fresh cut grass for tennis balls was registered as a European trademark, and the odour of beer for dart flights and of roses for tyres have been registered as trademarks in UK [11]. With these facts in mind, it is easier to understand that scents, because of their nature, do not possess the potential of being signs for the purpose of trademarks. Their qualitative variations caused by the ever-changing environment in which they exist, coupled with the inaptitude of human beings to recognise them, make them very unfit to satisfy the primary purpose of trademarks. Scents are very likely to cause confusion amidst consumers, who will rarely be able to identify the source of the product to which the scents are applied.

It is necessary will pay attention scents have no independent identity, but rather must be associated with other memories to enable recall. We which spoke above Detection and recognition of scents depends on individual sensitivity such as physical and mental abilities, and state of an individual's health [12]. In addition, description of scent marks registered with the USPTO are relative vague and a court may have difficulty enforcing the scent of 'bubble gum', 'cherry', 'grape' or 'strawberry' [13].

It is necessary to mark that neither TRIPS nor EC Directive addresses protection for scent marks. Some countries like Australia, France, Germany, Uzbekistan do not prevent such kind of registration, leaving the options open. But some countries like Mexico, South Korea, Brazil, India, Japan etc. scent marks are neither registrable nor have the courts considered protection of scent marks under intellectual property rights regime.



It is necessary to underline smell marks it is a group of trademarks has much in common with [14]. In this situations there will be a question let's admit if we entered to the market to buy goods we need for. Before eating this good smelled taste but after ate this good smelled awful. Let's see some practical examples with taste marks. In a certain case, a Netherlands corporation tried to register orange flavour for pharmaceuticals but the USPTO didn't allow it saying that is not indicate source of goods nor was it distinctive in nature. Further orange was considered to be functional in nature. The other important case in the regard is Eli Lilly's case where a company tried to register artificial strawberry flavour as a gustatory trademark for pharmaceutical products [15].

In some countries (Korea, Uzbekistan, Australia) for regulation of trade marks like taste marks authorised by legislative. For example by the Trade mark Act of Australia sign includes the following or any combination of the following, namely, any letter, word, name, signature, numeral, device, brand, heading, label, ticket, aspect of packaging, shape, colour, sound or scent. In Korea by the law of Understanding the Trademark Act of the Republic of Korea sec.1.1 (1) any symbol, text, figure, three dimensional shape, color, hologram, motion, or a combination of these elements as well as any other visually perceivable thing, sound, smell or any other sign that may be identified using sensory perception, may constitute a trademark only with one conditions this scents must as long as it serves the essential function of distinguishing certain products from others.

Other type of non-conventional trademark is sound marks. Sound marks would capture the attention of internet users much more efficiently than traditional marks, which in turn have catapulted their popularity in today's commercial world. In some countries like UK doesn't specifically exclude or include sound marks as a registrable trademark. Since, the UK Act allows for the representation of a trademark by means other than graphical representations, the possibility of having sound marks. Thus, it is upon the applicant to prove that a particular sound mark can function as a trademark. In 1950, NBC successfully registered the musical notes G, E, C played on chimes as a trademark for its radio broadcasting services. Other sound trademarks include the MGM lion's roar, the song "Sweet Georgia Brown" for the Harlem Globetrotters basketball team, the spoken letter's "AT&T" with a distinctive musical flourishing in background, and the beneficial financial services jingle. Registration of trademarks in sounds, the USPTO reports in force in the US are sounds and since 1946, there have only been 71 applications to register sounds as trademarks or service marks [16].

The TRIPS Agreement, EC Directive are silent on sound trade marks. The INTA Resolution 1997 on the inclusion of sound marks as registrable marks has analysed various impediments to the registration of sound as trademarks, such as, enforceability, functionality of such sounds, problems of graphical representations and physical affixations which they say can be solved with the help of traditional trademark principles.

CONCLUSION.

In Uzbekistan registration of non-traditional trademarks based on "Act of trademarks, service marks and geographical indication" [17] and the Rules of drawing, giving and consideration of the demand for registration of trade mark and service mark. By the article 3 Act of Trademark of the Republic of Uzbekistan prescribed for registration of non-traditional trademarks. Rule of registration trade mark and service mark for registration of non-traditional marks established enough requirements. By the procedure of registration all non-traditional as a sound, light and other like olfactory marks by the lagislative of Uzbekistan must present to the the Agence of Intellectual Property graphical form. For example if sound is giving for registration as a trade mark it must contain of sound characterization as well as recording musical notation or diagram frequency. If light is given for registration as a trademark announcer must show characterization of light symbol and their duration sequence fluorescence and other features.

At the last word on non-traditional marks we can say that: non-traditional marks as a trade changing very sharply. That's why legal defence and regulation of non-traditional in legislation very important question for solving it. I mean protecting of consumer's rights in the conditions of market economy.

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