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MOMENT TRADEMARKING: BALANCING IP RIGHTS WITH PUBLIC SENTIMENT

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INTRODUCTION

In the very wake of India's massive military operation code-named "Operation Sindoor," the Indian Trademark Registry itself saw a remarkable surge in activity: at least six separate applications were made in a matter of a few hours to register both name and the iconic imagery of the operation. Reliance Industries made one of the most high-profile applications under Class 41, which is for media and entertainment services- though the company swiftly withdrew it after public outcry and clarified that the filing was unauthorized and against the spirit of national respect.

Trademarking sensitive events refers to the practice of seeking legal protection for names, logos, or slogans which are closely identified with important national, geopolitical, or calamitous events. While the Indian Trade Marks Act of 1999 does not per se prohibit individuals or organizations from seeking trademarks in respect of such events, it does confer on the Registry the authority to reject applications on the grounds of a chain of absolute tests. Notably, Trade Marks Act, 1999 prohibits the registration of trademarks which are likely to be offensive to religious feelings, and other provisions prohibit marks which are likely to mislead the public, cause confusion, or be prejudicial to public interest. All these provisions oblige the Registry to exercise extreme caution in balancing the intersection of legal rights, public feelings, and the likelihood of exploitation.

Traditionally, the Registry has received applications for names such as "MH370," after the Malaysian Airlines disaster, "26/11," for the Mumbai terror attacks, and "Nirbhaya," for the 2012 Delhi gang rape case. Most of these have been opposed or refused outright, mainly on the grounds of lack of distinctiveness or risk of causing offence to public sensibilities.

LEGAL FRAMEWORK FOR TRADEMARKING EVENT NAMES IN INDIA

The Trade Marks Act, 1999, especially Section 9¹, sets out absolute grounds for refusal of registration of a trademark in India. These grounds are refusal to register marks that are not distinctive, descriptive, or likely to cause confusion or lead to the public being misled. Section 9(2)(b) of the Act² specifically prohibits registration of trademarks that contain or consist of any matter likely to cause offence to the religious susceptibilities of any class or section of the citizens of India. Section 9(2)(d)³ also prohibits registration of marks whose use is forbidden under the Emblems and Names (Prevention of Improper Use) Act of 1950⁴. Under this Act, use of some names, symbols, and emblems—Government of India, United Nations, and certain national insignia—is barred for trade or professional use. Where the name of an event, e.g., a military campaign, falls within the ambit of this Act, registration of the same as a trademark would be disallowed except with the approval of the government.

Indian courts and tribunals have uniformly held that trademarks that are descriptive, non-descriptive, or likely to cause offence to public sensibilities should be refused registration. In *Radha Krishna Bajaj v. Ajino Moto Co. Inc.*,⁵ the IPAB emphasized the role of Section 9 of the Trade Marks Act, 1999, in safeguarding public interest and avoiding the registration of marks that may mislead or cause offence. This principle applies directly to the recent spate of applications to trademark sensitive event names like "Operation Sindoor"

The recent rush to trademark "Operation Sindoor" is a textbook case with multiple parties—including individuals, a retired Air Force officer, and large conglomerates like Reliance Industries—scrambling to get the trademark as soon as the event was announced. While Reliance Industries later withdrew its application, the episode goes to highlight the Registry's salutary role of playing the balancing act between private and public interest.

It is the responsibility of the Trademark Registry to vet such applications, considering both legal grounds and the interests of the public. For example, while "Operation Khukri", the name for a military operation, by Abundantia Entertainment Pvt. Ltd. under Class 41 was sought for entertainment purposes, the Registry goes through each case on merits, balancing the

¹ The Trade Marks Act, 1999, s. 9

² Ibid, s. 9(2)(b)

³ Ibid, s. 9(2)(d).

⁴ The Emblems and Names (Prevention of Improper Use) Act, 1950, s. 3

⁵ 2002 PTC 529 (IPAB)

possibility of public confusion or insult with the intent of the application. Ultimately, the Registry's evaluation process—including opposition opportunities—will stop sensitive events' trademarks from being issued lightly. Such legal protection guards against event name abuse, balancing intellectual property interests against society's collective interests and feelings.

MOMENT TRADEMARKING: RISKS, PRECEDENTS, AND PUBLIC INTEREST

The phenomenon of "moment trademarking" is a trend where opportunistic trademark applications are done for names, phrases, or symbols pertaining to popular or current events that happen to be trending or of high interest, to capitalize on public passion and sentiment. The recent instance is a prime example: within a day of the disclosure of the military operation, at least six applications were filed under Class 41 for entertainment and media services by anyone ranging from private citizens to multinational giants like Reliance Industries, which later withdrew its application. This rush highlights how brands and individuals attempt to secure exclusive rights over terms that carry immediate national or emotional resonance, a trend seen both in India and internationally.

Such filings are a phenomenon of historical occurrence. Throughout the world, efforts to register trademarks for event names—like big sporting events, political campaigns, or even disaster-related phrases—have frequently generated legal and ethical controversies. Indian courts have previously addressed issues concerning deceptively similar trademarks, as in the Magic Moments case, but the "Operation Sindoor" incident is special due to its direct association with a recent national catastrophe and military campaign. The Registry's strict test procedure based on statutory imperatives and considerations of public interest provides for opposition by any party—including public organizations and government agencies—who feels the registration of the mark likely to be misleading, offensive, or contrary to public morality.

Public Interest Litigations (PILs) have been filed in the Supreme Court, arguing that such moves towards trademarking constitute the commercialization of national sentiment and collective grief, especially in the light of the operation's symbolic connection with sacrifice and loss of civilian and military lives. Petitioners contend that event names like "Operation

Sindoor"⁶ embody the emotions of the nation and should not be appropriated for private gain, calling for judicial restraint on their registration for commercial use.

Ultimately, the contemporary trademarking of names used to describe sensitive events promotes nuanced issues of balancing commercial concerns with the dignity of collective feelings.⁷ While trademark law offers mechanisms to avoid the exploitation of misleading, objectionable, or public policy-violating marks, the emotional and symbolic meanings used to describe national tragedies or acts of heroism demand closer examination. The legal controversies and public discourse surrounding this operation highlight the requirements of an insightful and ethical strategy—one that protects intellectual property rights and honors the profound feelings such event names bring to society.

REGULATORY RESPONSE, POLICY DEBATES, AND GLOBAL PERSPECTIVES

Against the backdrop of the growing number of trademark applications that are a result of sensitive or public events, the Controller General of Patents, Designs, and Trade Marks (CGPDTM) has clarified that the Indian Trademark Registry does not reject such applications per se at the filing point. Instead, all applications undergo rigorous examination procedures upon which marks likely to contravene the public interest or the prevailing laws are scrutinized, objections or rejections are raised as the case may be. The process ensures procedural fairness and gives applicants an opportunity to clear any deficiencies, attesting to the Registry's dedication to transparency and public perception. Moreover, the CGPDTM has taken note of attempts at commercialization of national or collective emotions, pointing to the Registry's role in the protection of the public interest.

Despite these protections, ongoing policy debate raises whether or not the existing legal framework is adequate. Even though the legislation gives the Registry scope to weigh legality against the public interest, but some are of the view that more explicit statutory prohibitions or directions may be needed to cope with the peculiar sensitivities of event-based marks,

⁶ Editorial, “*Operation Sindoor and the Ethics of Trademarking National Tragedy*”, The Hindu, May 5, 2024

⁷ B.B. Pande, “*Intellectual Property Law and Public Interest*” XLI Annual Survey Indian Law 171-198 (Indian Law Institute, 2005)

particularly since public outcry and judicial challenge- including PILs- continues to break out in the high-profile cases.

In comparative perspective, the other legal traditions, such as the United States and Germany, have also dealt with trademark applications on the topic of landmark events, such as "9/11," "Black Lives Matter," and "MeToo."⁸ Such applications are usually rejected on the basis of descriptiveness, non-distinctiveness, or public policy. Event-related names' trademarking is a process that serves both content creators, brands, and media practitioners but also has its own advantages and disadvantages. Trademarking can give the commercial monopoly, merchandising rights, and stronger brand identity but risk public ire and loss of reputation if the name under trademark is found insensitive and exploitative. Lastly, compliance with ethical practices of trademark by respect for collective sentiments and adherence to legal provisions is required to preserve brand worth and establish public trust in the ever-changing landscape of intellectual property rights.⁹

CONCLUSION

The complex interplay of intellectual property interests and public sensibilities demands sophisticated management of trademarking event-naming, most particularly those relating to national events or the public sentiment. While existing legislative frameworks in India provide diverse shields against misuse of sensitive language, developing trends necessitate ongoing vigilance and perhaps stronger policy guidance. Applicants are encouraged to assume a higher responsibility through the taking of diligent legal and ethical due diligence and balancing wider implications of their applications against public sentiment. Policymakers and regulators must continue to hone examination protocols, draw on international best practice, and, where appropriate, implement more express statutory provisions to cater to changing challenges. Responsible trademarking ultimately necessitates balance between commercial objectives and sensitivity towards collective feeling as well as maintaining intellectual property law as both firm and sensitive to public values.

⁸ See also, "USPTO Refuses 'Black Lives Matter' Trademark Applications," World Trademark Review, July 10, 2020, available at: <https://www.worldtrademarkreview.com/article/uspto-refuses-black-lives-matter-trademark-applications>

⁹ Rochelle Cooper Dreyfuss, "Expressive Genericity: Trademarks as Language in the Pepsi Generation," 65 Notre Dame Law Review 397, 415-418 (1990)