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A Comparative Jurisdictional Study of The Registrability of Single-Color Marks

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Abstract: The trademark law has gradually shifted from conventional marks such as words, symbols, and logos to the non-conventional marks, notably color trademarks. Despite issues with its distinctiveness and registrability, color has become more significant as a mark of brand origin across jurisdictions. This study explores the development of color marks within the broader framework of intellectual property rights (IPRs), particularly in light of the TRIPS Agreement, which broadened the ambit of protectable signs. Through a comparative analysis of Indian law under the Trade Marks Act, 1999 and Rules, 2017, and international jurisprudence from the United States and the European Union, the research explores the conditions under which single colors and combinations of colors may acquire distinctiveness and qualify for legal protection. It traces key judicial decisions, including *Qualitex* in the U.S. and *Libertel* in the E.U., which underscored the requirement of acquired distinctiveness and precise color identification through international coding standards. While technology has made accurate representation of color marks more feasible, issues of limited color availability, consumer confusion, and potential barriers to fair competition continue to pose difficulties for their protection. Although legal regimes have increasingly recognized the relevance of non-conventional trademarks, particularly color marks, their registration remains a complex and nuanced area requiring careful balancing of proprietary rights with public interest and market competition.

Keywords: single color marks; TRIPS; WIPO; non-conventional trademarks; Indian Trademark law; intellectual property

Citation: Malladi Gayathri. 2025. A Comparative Jurisdictional Study of The Registrability of Single Color Marks. *Trends in Intellectual Property Research* 3(1), 48-54.

<https://doi.org/10.69971/tipr.3.1.2025.88>



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1. Introduction

Several judicial proceedings can be traced back to the 1900s for the registration of non-conventional marks, especially color marks. The Trademark Act, 1999 defines a trademark in the conventional and general manner under *Section 2(1)(zb)* as “a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colors.”¹ Trademark is defined under the TRIPS Agreement² as “Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colors as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.” Non-conventional trademarks, *inter alia*, include color trademarks, shape marks, sound marks, touch marks, hologram, olfactory and movement trademarks. Colors have long been used by companies for identification of their brands and for distinguishing their products or services. For example, “Cadbury Chocolate” associates the color purple with its products and has been popularly recognized by the consumers (Arnold 2012) rights to publicity and personality are indelibly connected to the status of ‘celebrity’ in the modern era. Such rights have entrenched themselves as universal constituents of the rather important interest belonging to any human being

¹ Trade Marks Act, 1999, § 2(1)(zb), No. 47, Acts of Parliament, 1999 (India)

² Agreement on Trade-Related Aspects of Intellectual Property Rights. 1994. Apr. 15. Marrakesh Agreement Establishing the World Trade Organisation, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994), art. 15

under the IP law. To fit everything in a jiffy, publicity rights allow a person (typically a celebrity) to control and profit from merchandising of their socially and professionally popular identity. Personality rights are a broader bundle that protects certain interests in one's persona as regards privacy and exclusivity, encompassing the whole stretch of self-endorsement. In common legal parlance, however, personality rights and publicity rights are used synonymously.

For color marks, a brand will first choose exact color to represent their brand. For the registration, it is essential that they use the shade of color that is not already in use by others and is unique in nature, i.e. the exclusive right to use the essential and primary colors that are being used by multiple others in the course of their business will not be given to only one producer. If the business uses the pink or yellow color in their mark, they will be given protection only for a certain shade or type of pink or yellow that has a specific code associated with it, and not for the generic color itself. In Mattel, a certain shade of pink known as such 'Barbie Pink' (Pantone 219C) was trademarked or 3M Company had used 'Canary Yellow' for their Post-it Notes (Bhat 2023).

There are broadly two types of color marks, i.e., single color marks or combination of color marks. In single color marks, a singular color represents the brand and the same is protected. Such trademarks are not registered easily as it is difficult for a regular person to associate a single color with a brand. Applicants must show that the color is so unique and personal to them that the consumers are well aware about the association with the brand and are able to distinguish it from others. For example, 'Bismol Pink' used by the pharmaceutical company for their medical syrup, Pepto Bismol; or the combination of red and white used by Coca Cola for their soft drinks (Anonymous 2023); or the combination of blue and yellow used by the Swedish furniture retail company, IKEA.

2. Methods

Doctrinal research through examination of judicial precedents addressing color mark distinctiveness and registrability.

3. Results and Discussions

3.1 Evolution of Non-Conventional Trademarks

Non-traditional trademarks are protected differently in each jurisdiction as it is very difficult to determine whether they must be registered and exclusive right to use a certain smell, color or taste given to a proprietor is not arbitrary to other producers.³ For visibly non-traditional non-perceptible marks, i.e., sensory marks, such as touch, smell and taste, the challenges lie in the inefficacy of their graphical representation creating confusion for the consumers (Sinha and Kunal 2017). However, World Intellectual Property Organization (WIPO) recognizes even the non-conventional trademarks. Globally, several trademarks registries have been flooded with the filing of applications seeking protection for silhouettes, shapes, scents, textures, tastes, short cartoons, single colors, body movements, technical concepts, the positions of labels on products and Tarzan's yell as trademarks (Gangjee 2010).

The TRIPS agreement expanded the scope of trademarks in 1994. TRIPS definition of trademark was very wide in nature. Moreover, the functional definition for the same emphasized on the unique role of trademarks for the protection. The World Intellectual Property Organization Standing Committee on the Law of Trademark in 1998, studied the application of non-conventional trademarks. It categorized these marks into visual and non-visual trademarks. This classification and definition for trademarks was extremely broad and ambiguous in nature. This matter was deliberated upon for the first time at the Vienna conference and was subsequently revisited at the Brussels meeting (Tanisha 2020). Article 15 of the TRIPS agreement⁴ ioned aspects as well. TRIPS protects even non-conventional marks if they consist of certain distinctive features and are utilized as trademarks, thereby allowing the customers in identifying a specific good or service (Port 2010).

4. Position in India

The Trademarks and Merchandise Marks Act, 1959 had provisions relating only to traditional and general marks. But subsequent to the TRIPS, India decided to incorporate provisions regarding few of the non-conventional trademarks in its legislations, which was reflected in the Trademark Act, 1999. For a color trademark to exist as per Rule 23(2)(d) of the Trademark Rules, 2017, there must be a statement of description for the same in the application. The combination of colors must be distinctive in nature and only then will the authorities consider the application as per FORM TM-A. Hence, Indian legal system recognizes color mark as a type of trademark (Rao and Sana 2020).

A 'mark', under Section 2(1)(m) (Trade Marks Act 1999),⁵ is inclusive of "a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colors or any combination thereof." This definition, along with Section 2(1)(zb) (Trade Marks Act 1999)⁶ of the Act, 1999, added through the Trademark Rules of 2017, although specifically talks about combinations being a part of the mark, it does not imply that the registration or protection of a single color mark is excluded from the Act.

While the aforementioned are both inclusive definitions, the Draft Manual elucidates registration mechanism of marks, such as sound, color, smell and shape, "will require special consideration".⁷ Draft manual described the extent to which the principles that are applicable to conventional trademarks conform to non-conventional subject matter. It also proposed the new supplemental rules' forms and contents (Gangjee 2010).

³ <https://www.kashishworld.com/non-conventional-trademarks>.

⁴ TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organisation, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994) art. 15

⁵ Trade Marks Act, 1999, § 2(1)(m), No. 47, Acts of Parliament, 1999 (India)

⁶ Trade Marks Act, 1999, § 2(1)(zb), No. 47, Acts of Parliament, 1999 (India)

⁷ Draft Manual Ch II, at 3.1.

Section 9 of the 1999 Trade Marks Act⁸ stipulates the scope of color marks, wherein their application for registration might get rejected if it lacks any distinctive character, contains indications about the goods that are restricted, or became customary throughout time. Section 10 of Draft Manual⁹ talks about the limitation of the color marks. It states that a trademark may be wholly or partly limited to any combination of colors, the Registrar or High Court may determine the distinctive character of the color mark.

The Court, in the *Whirlpool Corporation v. Registrar of Trade Marks*,¹⁰ highlighted the presumption that when the mark is registered without any limitation, it implies that the complete combination of colors is registered.

In India single color mark are rarely re recognition due to the high level of proof required to be submitted by the applicant. When a single color is used by the brand, it usually represents the complete characteristic of the product associated with it. It is very difficult to take any action against the third party who uses the same color in their product as there is ambiguity in the legislation. It is necessary to prove that the color used is unique and closely related to the brand that wishes to get the mark registered.¹¹ As per Rule 29 of the Trademark Draft Manual,¹² the applicant must clearly identify the mark associated with the product and brand. They must use the International Classification System of Colors to describe the color mark and this should be verified for the registration. There must be a clear graphical representation of the mark along with the description and relation to determine the scope of the registration.

To ensure the registration of a combination of colors, the applicant must show how closely related they are to the product in terms of packaging or logo and how the general public associates that particular color with the intended brand. Any evidence to substantiate or strengthen their stance may be produced and brought before the concerned authorities (Kumar 2024).

5. Practicability in the Registration of Color Marks

Color, being a ubiquitous and pervasive element in our daily lives, makes it difficult to understand and apply the traditional rules and principles governing the registration of trademarks. The registration of color as a trademark is often interpreted in a very restrictive manner, thereby obtaining the “registered” status challenging.¹³

Non-traditional trademarks have a distinct association in the minds of the consumers (Hammersley 1998). Colors, unlike names or logos, are limited in number. The registration of primary or abstract colors was the most controversial way to seek protection under IP laws (Schulze 2003). The possibility of existence of colors still remains exhaustible. If the exclusive use of color as a trademark becomes a widespread norm rather than the exception, it the resulting confusion for consumers could possibly become overwhelming (Kudrjavceva 2012). The recognition and acceptance of non-conventional trademarks is rising. Previously, no technology accurately represented color marks, thereby making it difficult to ensure consistent representation of these trademarks across different media. (Bently and Brad 2014).

Recently, the technological advancements can accurately represent even the most sophisticated color shades. Additionally, every specific color shade is now assigned with a unique code. Overall, this minimizes the risk and scope of confusion for registering and reproducing color trademarks (Arnold 2012).

6. The United States of America

The Lanham Act, 1946 stipulates provisions regarding the registration of trademarks. Subsequently, through amendments, it has included the procedure relating to color marks as well. The definition claims that trademark includes “any word, name, symbol, device, or any combination thereof”.¹⁴ Certain conditions were laid down for a color mark as a trademark. These must be used to identify the brand and must not have a functional purpose, i.e. there must be a secondary or additional meaning attached to the mark in relation to the brand. These should promote healthy competition without putting other producers at a disadvantage (Banerjee and Sandhya 2024).

In, *Re Owens-Corning Fiberglas Corp. 1985*¹⁵ the US Court of Appeal discussed the admissibility of single-color marks for the first time. Owen Corporation had the exclusive right to use a certain shade of pink for their fiberglass insulation products preventing others from using it as they were solely associated with them. The court, talked about how a color mark may be treated as a trademark once it has acquired a certain degree of distinctiveness (Balaji 2025).

The United States Supreme Court in 1995, made a landmark decision in the *Qualitex Case 1995*,¹⁶ where the petitioner had a history of coloring its dry-cleaning press pads with a distinctive green-gold shade. When Jacobson Products, a competitor, began using a similar color on its press pads, *Qualitex* registered the color as a trademark and added a trademark infringement claim to its ongoing lawsuit against Jacobson. The Supreme Court held that the Lanham Act permits the registration of a color mark as the Act's language broadly defines what can qualify as a trademark including principles that a mark must distinguish the seller's goods, indicate their source and not serve a functional purpose. *Qualitex's* green-gold color met these criteria, as confirmed by the District Court. Customers were seen to associate the color with *Qualitex*, giving it an ancillary meaning and hence distinguishing such color as the source of the press pads. The color served no functional purpose beyond avoiding visible stains. Therefore, trademark law

⁸ Trade Marks Act, 1999, § 912, No. 47, Acts of Parliament, 1999 (India).

⁹ Trade Marks Act, 1999 § 10, No. 47, Acts of Parliament, 1999 (India).

¹⁰ *Whirlpool Corporation v. Registrar of Trade Marks* (1998) 8 SCC 1.

¹¹ <https://www.kashishipr.com/blog/protection-of-color-trademarks-under-the-indian-trademark-law/>

¹² Rule 29 of the Trademark Draft Manual (India).

¹³ http://www.legalserviceindia.com/articles/collour_marks.htm

¹⁴ Lanham Act § 2(f), 15 U.S.C. § 1052(f) (1946) (as amended)

¹⁵ *Re Owens-Corning Fiberglas Corp.* 774 F.2d 1116 (Fed. Cir. 1985)

¹⁶ *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159 (1995)

protects the petitioner's use of its green-gold color, unless there are compelling reasons to disallow the use of color alone as a trademark. The Supreme Court noted that since "human beings might use as a "symbol" or "device" almost anything at all that is capable of carrying meaning, [the statutory definition] read literally, is not restrictive." Color mark must further be supported by a color claim which lays down features of the color and clearly describes where and how the color has been used by the proprietor. This US approach directly contrasts with the Indian position, where the literal inclusion of "combination of colors" in Section 2(1) (zb) of the 1999 Act has been narrowly interpreted to exclude single colors, making the Indian regime significantly more conservative than the expansive US interpretation of "device" (Narayanan 2017).

In *Leschen & Sons Rope Co Case 1906*¹⁷, the issue was the registration of color of the ropes manufactured by them. The Court held the Leschen's registration for trademark to be very wide in nature and verbalized a certain degree of doubtfulness in the validity of a trademark claim solely for colors (Yang 2012; Schechter 1995).

Later in the *Qualitex Case*, four aspects were contended by the opposite party, against allowing the use of color alone as a trademark. Disputes can happen that courts might find hard to resolve when the competitors would not be sure which shades of colors are available to use lawfully. There is a limited supply of colors that would be depleted by usage of competitors which makes it impractical to enforce such a rule. In many older cases including the decision of Court interpreting the pre-Lanham Act trademark law does not support the use of colors solely for the purpose of trademark. Already the firm can use color as a part of their trademark and can depend on "trade dress" protection, making this proposed rule unnecessary.

During the following years, in the United States, it was settled that the applied color mark, for being eligible for registration, shall be one that is distinguishable, unambiguous, non-functional and associated with the goods or services being provided (Starr and Bennett 2009).¹⁸ Unlike India, where the burden of proving acquired distinctiveness (secondary meaning) for a color mark falls under common law principles of passing off, the US system, following *Qualitex*, explicitly permits the registration of non-functional single colors that have acquired distinctiveness under the federal statute itself (*Qualitex Co. 1995*).¹⁹

7. European Union

Indian trademark law and judicial theory have mirrored the features of British law due to its common law emphasis²⁰. With the introduction of the Trademarks Act, 1994, the British Law had begun a permanent and irreversible divergence that shows departure from its origins as a common law country and became predominantly European, with a wide range of civil law ideas and interpretive techniques that influence the development of substantive trademark law (Simon 2005, Beier 1995).²¹

Current trademark law in UK is quite opposite to that of pre-1994 law. In India, there is certainly a higher degree of doctrinal coherency between the statute of 1958 and the Act of 1999. This disparity has been observed by other common law countries, while reiterating on the significance of the local situations and prerequisites (*Gangjee 2010*).

The South African Supreme Court of Appeal in *Triomed S. Afr.; Nation Fittings S.G.H.C.*²² has noted that "The British Trade Marks Act 1994 (Chapter 26) had to conform to the [European] Directive and its interpretation by the [European Court of Justice (ECJ)] binds the English courts. This does not mean that we are bound to follow these authorities... [The South African Act] must be interpreted and applied in the light of our law and circumstances. Local policy considerations may differ from those applicable in Europe."

The European Court of Justice's (ECJ) numerous rulings have established the position inside the EU. In the *Libertel Groep BV v. Benelux-Merkenbureau*²³, the European Court of Justice (ECJ) held that the applicant must provide a sample of the color and information about the particular color shade in compliance with the International Color Code for a color mark registration. This ensures that there is a consistent and stable scale being used where there are less chances of confusion ensuring that the correct color code is registered. The court also stated that 'color' may not be as distinctive and it can be hard to identify the source. But if the producer has been in the market for a long time and has done enough marketing and the consumers associate the color with the brand, then a color mark may be considered as a trademark. This strict EU requirement for graphical representation using international color codes (like Pantone) is different from India, where the Draft Manual acknowledges the practice. However, it claims that "law or practice in India does not provide for such interpretation," thereby creating an immense procedural hurdle for applicants seeking to protect precise color shades.²⁴

In the *Libertel Case*,²⁵ the court heard an application to use pure orange as the primary color for telecommunications-related goods and services. Because it tends to fade over time, the judiciary determined that a simple replication of the color on paper would not be deemed sufficiently durable. The written description can be unclear (for example, how many shades of "orange" are there?). However, it was decided that a foreign point of reference, a universally accepted color scheme system, had been acceptable because these Codes were regarded as transparent and dependable. Over time, many color codes have been recognized and accepted by the UK Trade Marks Registry²⁶, accompanied by a written explanation if the color has adequate visual representations. Although some

¹⁷ *Leschen & Sons Rope Co. v. Broderick & Bascom Rope Co.*, 201 U.S. 166 (1906)

¹⁸ United States Patent and Trademark Office. 2000. *Examination Guide No. 2-00*, Aug. 15, 2000, Office of the Commissioner for Trademarks

¹⁹ *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159 (1995). (Supra at 35)

²⁰ *SSunder Parmanand Lalwani v. Caltex (India) Ltd.*, AIR 1969 Bom 24, 32 (High Ct. Bombay) (India); Draft Manual Ch II, at 1.2. (India)

²¹ *Zino Davidoff SA v. Gofkid Ltd.* 2003. Case C-292/00. European Court of Justice. 28 F.S.R. 490

²² *Triomed (Pty) Ltd v. Beecham Group Plc*, F.S.R. 27 (S. Afr.); *Nation Fittings v. Oystertec Plc & Anr.*, S.G.H.C. 225 (High Ct. Singapore)

²³ *Libertel Groep BV v. Benelux-Merkenbureau*, (C-104/01) [2003] E.T.M.R. 63 (European Court of Justice)

²⁴ *Indian Trade Marks Registry*, Draft Manual of Trade Marks: Practice and Procedure (2015), 4.7.4.

²⁵ *Id.*

²⁶ UK TM Registry Practice Amendment Notice 2/06 (Apr. 12, 2006).

interpretation may be allowed through other reference materials, there are unquestionably restrictions on the aforementioned procedure. This right should be practically possible so that readers of the Trademark Journal or others looking at the register can understand the trademark's graphical depiction. Accurate representations that cannot be interpreted without costly equipment or specialized services are a significant burden on third parties and are probably going to be turned down because they're not "easily accessible".²⁷

The Draft Manual represents individual colors in an oddly phrased and ambiguous manner.²⁸ It acknowledges the position of the UK where color codes are permitted. It states that 'law or practice in India does not provide for such interpretation'.²⁹ It refers to a case *Ty Nant U.K.*³⁰ where the applicant failed to meet the requirements of graphical representation, which is the foundation of Indian law, by using technical terms in the description of a color without specifying what precisely would meet the requirements for such graphical representation for color trademarks. The resultant explanatory gap in Indian law regarding clear graphical representation places India well behind the harmonized EU approach, creating uncertainty for brand owners who cannot precisely delineate the boundaries of their color protection.³¹

These markings might be represented because the distinctiveness requirements for single-color mark registration are mentioned in the same part of the Draft Manual. However, there is a lack of clarity around how this representation will actually occur in a real-world setting.

The single colors should be graphically represented through the commonly known name of the color, combination of a sample, a written description stating the details as to how the single color is going to be used for such specific goods or services and the reference to the relevant international color code (WIPO 2008). The color mark needs to have acquired distinctiveness for it to be protected in the same manner as seen in the US *Qualitex* case.

In another case before the ECJ, the applicant sought protection for a red and blue mark. The Court held that the applicants seeking to register a combination of colors must precisely and accurately define the contours of the color. Otherwise, it would lack precision and clarity with respect to what is protected under the trademark.³² The EU's emphasis on precise spatial delimitation for color combinations reflect a higher standard of clarity and public notice than is typically enforced by the Indian Registry for composite marks, where protection is often presumed across all colors unless explicitly limited under Section 10(2).³³

The Indian judiciary upholds the common law approach of the 1958 Act in specific selective sectors only, although the Indian Trademark Act, 1999 frequently substantially resembles the Trademark Act, 1994 of the United Kingdom.

8. Registrability of Color Marks

In the *Libertel Case*, the ECJ opined "[An abstract] color per se cannot be presumed to constitute a sign. Normally a color is a simple property of things. Yet it may constitute a sign. That depends on the context in which the color is used".

The incidental issue concerning the mixture of two pure colors was considered by the court in the *Heidelberger Case*.³⁴ It was considered "necessary to establish that in the context in which they are used colors or combinations of colors which it is sought to register in fact represent a sign".³⁵ Therefore, a simple statement like "Blue and Red" would not be sufficient to meet the graphical representation requirement. In an application that involves "two or more colors, designated in the abstract and without contours, [these] must be systematically arranged by associating the colors concerned in a predetermined and uniform way".³⁶

Similarly, the Trademark Draft Manual further indicates that until "the colors are used... in a special or particular pattern or arrangement, it is likely to be more difficult to prove that in such cases color would lend distinctiveness as a badge of origin".³⁷ The colors may be generically cosmetic or a bare holding of things, thereby deeming it not adequately unique and distinctive as a trademark. For peculiarity or uniqueness, a relatively more debatable query is whether colors will ever fulfil the requirement of intrinsic distinctiveness. The indispensable query at this point is whether the color "cold" will be interpreted as serving as a trademark in the relevant public contact, at the earliest possible moment. Consequently, it is not feasible that we have a prior fixed assumption in the sense that such signs function as trademarks, as "there is a public interest in not limiting the availability of colors for other traders".³⁸

Compared with the EU or UK approach, the Trade Marks Draft Manual imbibes a guarded position towards the assessment of uniqueness or distinctiveness of colors. A single color shall, only in exceptional circumstances, be competent at portraying the source of a good or service. Single-color marks are typically subject to complaint under Section 9(1)(a) of Trademark Act 1999³⁹

²⁷ *Id.*

²⁸ Draft Manual Ch II, at 5.2.1.2. (India).

²⁹ *Id.*

³⁰ *Ty Nant Spring Water Ltd's Application*, R.P.C. 55 (U.K.).

³¹ *Triomed (Pty) Ltd v. Beecham Group Plc*, F.S.R. 27 (S. Afr.); *Nation Fittings v. Oystertec Plc & Anr.*, S.G.H.C. 225 (High Ct. Singapore). (Supra at 46)

³² https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/08_intellectual_property_law/18_non-conventional_trademarks_and_domain_names/et/8090_et_et.pdf, EPGP.

³³ Trade Marks Act, 1999, § 10(2), India.

³⁴ *Heidelberger Bauchemie*, (C-49/02) E.T.M.R. 99 (E.C.J.)

³⁵ *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159 (1995). (Supra at 35)

³⁶ Trademark Act, 1999, § 2(1)(zb), Rule 2(1)(k), No. 47, Acts of Parliament, 1999 (India).

³⁷ Draft Manual Ch II, at 5.2.1.

³⁸ Draft Manual Ch II, at 5.2.1.2

³⁹ <https://indiankanoon.org/doc/1158841/>.

due to their inherent inability to be distinctive. However, it raises the possibility and opportunity for a single color to have such intrinsic uniqueness, even in the view of consumers.

In USA, a color that is simple and unadorned can never be intrinsically unique. It can only become so unique over time. According to the US Supreme Court, a product's color differs from "fanciful," "arbitrary," or "suggestive" terms or designs that nearly always indicate that they are referring to a particular brand. Instead, over time, consumers can associate a brand with a certain color on a product or its packaging (for example, a color that seems out of place, like pink on a company's insulating material or red on the head of a big industrial bolt).⁴⁰

9. Recommendations

The emphasis should be shifted from simple use to definitive source-identifying distinctiveness when evaluating a color mark's registrability by the courts and the Registrar using a formal, weighted test. The factor with the highest weight, at 40%, should be consumer recognition. The color or combination must be primarily associated with the applicant's goods or services, according to consumer surveys, with at least 65% of the relevant purchasing public in major metro and Tier-II cities (reflecting geographical diversity).

Non-Functionality should have 20% of the total weight. It must be demonstrated that the color is ineffective in the Indian business environment. A color is considered useful if it is the product's most technically required or economically viable color. It fulfills a communication function frequently connected to the product category (for example, red for danger, unless the applicant can demonstrate a compelling secondary meaning). It provides a notable performance or aesthetic edge that rivals logically require (heat-reflective paint colors, for example). Candidates must demonstrate that they have invested a significant amount of money in promoting the color as a trademark, not just the word or device mark that just so happens to be in that color.

A tiered approach to protection that links the mark's strength to its protection scope must be used in order to actively counteract the limited color spectrum's depletion. Tier 1 should be reserved for single, highly distinctive colors (e.g., Cadbury Purple or a unique shade identified by a Pantone code). The same color can be used by other traders in unrelated classes without creating confusion because protection is strictly restricted to specific, narrow classes of goods or services (for example, "chocolate" but not "confectionery" in general). Tier 2 should be reserved for Color schemes, patterns, or single hues utilized in larger classes are covered in this tier. Only the spatial delimitation (pattern, arrangement, or ratio) of the color mark as precisely specified in the application is eligible for registration. This reduces the risk of depletion while preserving the registrant's unique visual trade dress by enabling other traders to employ the same two or three base colors in an entirely different arrangement or pattern.

The Trade Marks Registry should implement administrative and technological changes, namely mandatory color code standardization, adding a color search option and specialized examiner training. In accordance with Section 10(1), the Registry should require that all color mark applications define the claimed color or colors using globally recognized standards such as Pantone, RGB, or HEX codes. This will lead to accurate and impartial protection. Examiners and applicants should use color codes to search the Registry's public search database. This would greatly improve the effectiveness and caliber of the Section 11 (Relative Grounds) examination procedure by immediately highlighting comparable registered or applied-for color marks. Trade Marks Examiners should be given specialized instruction in color theory, visual perception, and the Multi-Factor Test, especially with regard to the difference between acquired distinctiveness and aesthetic functionality.

10. Scope and Limitations

The study covers the legal treatment of color marks within key jurisdictions including India, the United States, the European Union, and Australia. It examines statutory provisions, landmark judicial decisions, and administrative practices related to color mark registration. The focus is primarily on single color trademarks and combination color marks, excluding other non-conventional marks like scent or sound. The study is limited by the evolving nature of trademark jurisprudence and the lack of uniform global standards on color mark registrability. Analysis is constrained to publicly available case law and statutes up to the date of research, excluding confidential or unpublished tribunal decisions.

11. Conclusions

Color marks can acquire distinctiveness and function as effective trademarks capable of legal protection if supported by sufficient use and consumer association. This research addresses the challenges and complexities surrounding the registrability of color marks as non-conventional trademarks, focusing on their protection in India, the United States, and the European Union. The ambiguity, stringent requirements, and limited precedents govern the registration and enforcement of single-color marks, compounded by the issues of distinctiveness, consumer perception, and competition among businesses for exclusive color usage rights. The legal frameworks of several countries have gradually transformed to accommodate the recognition and applicability of color trademarks. Without supporting words or figurative symbols, non-traditional marks are incredibly erratic flags of origin. For marketing mineral water, no producer relies solely on the form of the container and forgo the brand or company name. Hence, utilizing such marks should be done with extreme caution.

References

Anonymous. 2023. Color as a trademark in India – significance, challenges, and the path to registration. *Company 360.in* <https://company360.in/blog/color-as-a-trademark-in-india-significance-challenges-and-the-path-to-registration/>

⁴⁰ *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159 (1995). (Supra at 35)

- Arnold, Bruce Baer. 2012. Trademark victory allows Cadbury to retain its purple reign. *The Conversation*. <https://theconversation.com/trademark-victory-allows-cadbury-to-retain-its-purple-reign-9950>
- Balaji, Gautham. 2025. Unconventional Trademarks: Can Sounds, Smells, Colours and Other Non-Traditional Trademarks Be Protected in India? De Penning and De Penning. <https://depenning.com/blog/unconventional-trademarks-evolution/>
- Banerjee, Ananyaa, and Sandhya A. Parimala. 2024. Importance and Challenges of Protecting Colour Marks in India. <https://ssrana.in/articles/importance-and-challenges-of-protecting-colourmark/>
- Beier, Friedrich-Karl. 1995. The Development of Trade Mark Law in the Last Twenty-Five Years. *International Review of Intellectual Property and Competition Law* 26: 769.
- Bently, Lionel, and Brad Sherman. 2014. Intellectual Property Law. *Oxford University Press*. https://books.google.com.pk/books/about/Intellectual_Property_Law.html?id=nmKCBAAAQBAJ&redir_esc=y
- Bhatt, Mridula. 2023. The Case of Unconventional Trade Marks - Does the Trade Marks Act, 1999 Need Reform? *SSC online*. <https://www.sconline.com/blog/post/2023/03/18/the-case-of-unconventional-trade-marks-does-the-trade-marks-act-1999-need-reform/>
- Gangjee, Dev. 2010. Non Conventional Trade Marks in India. *National Law School of India Review* 22: 67–95. <https://repository.nls.ac.in/nlsir/vol22/iss1/4>
- Hammersley, Faye M. 1998. The Smell of Success: Trade Dress Protection for Scent Marks. *Marquette Intellectual Property Law Review* 2: 105–156. <https://scholarship.law.marquette.edu/iplr/vol2/iss1/4/>
- Kudrjavceva, Jekaterina. 2012. Issues Surrounding Registration of Colour Trade Marks. *Riga Graduate School of Law Research* 9. <https://www.rgsi.edu.lv/uploads/research-papers-list/14/rp-9-kudrjavceva-final.pdf>
- Kumar, Mukesh. 2024. Trademark Protection for Colour Marks. <https://www.tutorialspoint.com/trademark-protection-for-colour-marks>.
- Narayanan, P. 2017. *Law of Trade Marks and Passing Off*. 6th ed. LexisNexis.
- Port, Kenneth L. 2010. On Non-Traditional Trademarks. *William Mitchell College of Law Legal Studies Research Paper Series*. <https://ssrn.com/abstract=1564230>.
- Rao, Dipak, and Sana Singh. 2020. The Contemporary Issue of the Non-Conventional Trademarks. *S&P*. <https://codleo.net/codleo.net/digital/singhaniacopy/blog/the-contemporary-issue-of-the-non-conventional-trademarks>.
- Schechter, D. R. 1995. *Qualitex Co. v. Jacobson Products, Inc.*: The Supreme Court ‘Goes for the Gold’ and Allows Trademark Protection for Color *Per Se*. *Fordham Intellectual Property, Media & Entertainment Law Journal* 5: 480–500. <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1096&context=ipltj>
- Schulze, Charlotte. 2003. Registering Colour Trademarks in the European Union. *European Intellectual Property Review* 25: 55-67. <https://www.docs-crids.eu/docs-crids>
- Simon, Ilanah. 2005. How Does Essential Function Drive European Trade Mark Law? *International Review of Intellectual Property and Competition Law* 36: 401. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1597300
- Sinha, Shikhar, and Kunal Gopal. 2017. Tracing the Jurisprudence of Smell Marks as a Trademark. *HNLU Student Bar Journal* 1: 61–69. <https://hnlusbj.wordpress.com/wp-content/uploads/2016/11/tracing-the-jurisprudence-of-smell-marks-as-trade-marks.pdf>
- Starr, H. David, and Bennett G. Gregory. 2009. Trademark Protection Color Marks in the US. *China Intellectual Property* 5–6: 98–105.
- Tanisha, Ranjan. 2020. India: Protection of Non-Conventional Trademarks, Fast forward Justice’s Law Journal. <https://fastforwardjustice.com/india-protection-of-non-conventional-trademarks>
- WIPO. 2008. Representation and Description of Non-Traditional Marks - Possible Areas of Convergence (SCT 19/2): 1-14. https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=100912
- Yang, Deli. 2012. Colour Markability: Registrable in Few Nations, but Debatable among Many! *Journal of Intellectual Property Rights* 17 (3): 246–255. <http://docs.manupatra.in/newslines/articles/Upload/4A199985-3F1B-4FF4-9989-AD7414F38B6A.pdf>