

Colour Marks Under Indian Trademark Law: Registrability, Case Laws and Practical Challenges [cite: 14]

Introduction

When consumers see a particular colour, can they instantly identify a brand without seeing its name or logo? [cite: 14] For some of the world's most recognizable businesses, the answer is yes [cite: 14]. The distinctive red used by beverage companies, the robin-egg blue associated with luxury jewelry, or the purple shade connected with premium chocolates demonstrate how colours can become powerful business assets [cite: 14].

In today's highly competitive marketplace, brand recognition extends beyond words and logos [cite: 14]. Businesses increasingly invest in unique visual identities, including colours, shapes, sounds, and packaging designs [cite: 14]. As branding strategies evolve, companies are exploring legal protection for these non-traditional brand identifiers [cite: 14]. Among them, colour marks have emerged as one of the most intriguing yet challenging forms of trademark protection [cite: 14].

In India, obtaining trademark protection for a colour is possible but significantly more complex than registering a traditional word mark or logo [cite: 14]. The applicant must demonstrate that the colour functions as a source identifier and has acquired distinctiveness in the minds of consumers [cite: 14]. This article examines the legal framework governing colour marks under Indian trademark law, registrability requirements, notable case laws, practical challenges, and strategic considerations for brand owners [cite: 14].

Understanding Colour Marks Under Trademark Law

A colour mark refers to a colour or combination of colours used by a business to distinguish its goods or services from those of competitors [cite: 14]. Unlike conventional trademarks, colour marks do not rely on words, logos, symbols, or designs [cite: 14]. Instead, the colour itself serves as the identifier of commercial origin [cite: 14].

Colour trademarks generally fall into two categories:

- **Single Colour Marks:** A single specific colour claimed as a trademark for particular goods or services [cite: 14]. Examples globally include Purple associated with chocolate products, Tiffany Blue associated with luxury jewelry, and Brown associated with parcel delivery services [cite: 14].
- **Colour Combination Marks:** A specific combination or arrangement of colours used consistently by a business [cite: 14]. These are generally easier to register because combinations are considered inherently more distinctive than individual colours [cite: 14].

Legal Framework Governing Colour Marks in India

Colour marks are recognized under the legal framework established by the Trade Marks Act, 1999, Trade Marks Rules, 2017, Judicial precedents, and International trademark principles [cite: 14].

Definition of Trademark: Section 2(1)(zb) of the Trade Marks Act, 1999 defines a trademark broadly as a mark capable of being represented graphically and capable of distinguishing the goods or services of one person from those of others [cite: 14]. The definition includes Shape of goods, Packaging, and Combination of colours [cite: 14]. This statutory recognition expressly acknowledges colour combinations as potentially registrable trademarks [cite: 14].

Can a Single Colour Be Registered as a Trademark in India?

Yes, but registration is extremely difficult [cite: 14]. Indian trademark authorities generally presume that colours should remain available for use by all market participants unless exceptional circumstances justify exclusive rights [cite: 14]. To obtain registration, the applicant must establish:

- **Distinctiveness:** The colour must identify a single commercial source [cite: 14].
- **Acquired Secondary Meaning:** Consumers must associate the colour specifically with the applicant [cite: 14].
- **Extensive Use:** The applicant should demonstrate Long-term use, Continuous use, Exclusive use, and Significant market recognition [cite: 14].
- **Consumer Recognition:** Evidence may include Consumer surveys, Market studies, Advertising expenditure, Sales figures, and Media coverage [cite: 14].

Without substantial evidence, applications for single-colour marks often face objections [cite: 14].

Registrability Requirements for Colour Marks in India

1. **Graphical Representation:** The colour mark must be represented clearly in the application [cite: 14]. Applicants typically provide Colour samples, Pantone references, Detailed descriptions, and Colour specifications [cite: 14].
2. **Distinctive Character:** The colour must distinguish the applicant's goods or services from competitors [cite: 14]. The Trademark Registry evaluates Market perception, Industry practices, and Consumer association [cite: 14].
3. **Non-Functionality:** A colour cannot be monopolized if it serves a functional purpose [cite: 14]. Examples include Red for warning labels (Safety function), Green for eco products (Descriptive function), and Orange for visibility equipment (Utility purpose) [cite: 14]. Functional colours generally cannot receive trademark protection [cite: 14].

4. **Acquired Distinctiveness:** This is often the most critical requirement [cite: 14]. Evidence may include Years of use, Advertising campaigns, Market share, Consumer recognition surveys, Industry awards, and Brand valuation reports [cite: 14].

Why Colour Marks Face Greater Scrutiny

Trademark examiners often raise objections because colours are viewed as limited commercial resources [cite: 14]. Allowing unrestricted monopolization of colours could Restrict competition, Create market barriers, and Reduce branding options for competitors [cite: 14]. Consequently, colour mark applications are examined more rigorously than conventional trademarks [cite: 14].

Landmark International Cases on Colour Trademarks

- **Qualitex Co. v. Jacobson Products Co.:** The United States Supreme Court recognized trademark protection for a distinctive green-gold colour used on dry-cleaning press pads [cite: 14]. The Court held that colours can function as trademarks when they identify source [cite: 14].
- **Christian Louboutin v. Yves Saint Laurent:** The dispute concerned Louboutin's famous red sole shoes [cite: 14]. The Court recognized trademark rights in the red sole used in a specific context, demonstrating that colour protection may be limited to particular applications [cite: 14].
- **Tiffany Blue Trademark:** The distinctive Tiffany Blue colour has become one of the most recognized colour marks globally due to extensive and exclusive use [cite: 14].

These cases demonstrate that colour trademarks are achievable when strong consumer association exists [cite: 14].

Indian Judicial Approach Towards Colour Marks

Indian courts have generally acknowledged that colours may acquire distinctiveness [cite: 14]. However, courts remain cautious in granting exclusive rights over colours unless substantial evidence supports the claim [cite: 14].

- **Colgate Palmolive v. Anchor Health:** The dispute involved trade dress and colour schemes used in toothpaste packaging [cite: 14]. The Court examined whether consumers associated specific packaging colours with a particular source [cite: 14]. The case highlighted the importance of overall visual identity and consumer perception [cite: 14].
- **Cadbury Purple Trademark Disputes:** Cadbury's attempts internationally to protect its signature purple shade illustrate the practical difficulties associated with claiming exclusivity over single colours [cite: 14]. Such disputes continue to influence discussions regarding colour trademark protection worldwide [cite: 14].

Colour Marks vs Trade Dress Protection

Many businesses mistakenly assume that colour protection requires a separate colour mark registration [cite: 14]. In reality, protection may also arise through trade dress [cite: 14].

Trade Dress Includes: Packaging, Product appearance, Colour schemes, Store layouts, and Product presentation [cite: 14].

In many situations, obtaining protection for the overall packaging or trade dress may be easier than securing registration for a standalone colour [cite: 14]. **Example:** A beverage company using a Yellow label, Red cap, and Specific bottle shape may obtain stronger protection through trade dress rather than attempting to monopolize yellow alone [cite: 14].

Common Challenges in Registering Colour Trademarks

- **Lack of Distinctiveness:** Many colours are considered ordinary industry features [cite: 14].
- **Insufficient Evidence:** Applicants frequently fail to provide adequate proof of consumer recognition [cite: 14].
- **Functional Use:** Colours serving practical purposes are unlikely to qualify [cite: 14].
- **Industry-Wide Usage:** If competitors commonly use the same colour, exclusivity becomes difficult to establish [cite: 14].
- **Registry Objections:** Trademark examiners often issue objections requiring substantial evidence and legal arguments [cite: 14].

Practical Business Scenarios

- **Scenario 1: Luxury Cosmetics Brand:** A cosmetics company consistently uses a distinctive metallic rose-gold shade across all packaging [cite: 14]. After several years of extensive advertising and nationwide recognition, the company may seek protection for the colour scheme [cite: 14].
- **Scenario 2: Startup Beverage Company:** A startup launches products using green packaging [cite: 14]. Since numerous competitors use green in the industry, obtaining exclusive rights over the colour alone would be difficult [cite: 14].
- **Scenario 3: Fashion Brand:** A fashion company uses a unique colour combination across stores, packaging, and marketing materials [cite: 14]. Protection may be more effectively pursued through trade dress and colour combination marks [cite: 14].
- **Scenario 4: Technology Brand:** A technology company invests heavily in a distinctive brand colour used consistently across products, websites, and advertising campaigns [cite: 14]. Over time, acquired distinctiveness may support a colour trademark application [cite: 14].

Evidence Required to Establish Acquired Distinctiveness

Businesses seeking colour trademark protection should maintain comprehensive records [cite: 14]. Useful Evidence Includes Sales turnover figures, Advertising expenditure, Consumer surveys, Market research reports, Brand recognition studies, Press coverage, Awards and industry recognition, Social media engagement metrics, and Distribution network details [cite: 14]. The stronger the evidence, the greater the likelihood of registration [cite: 14].

Strategic Advantages of Colour Trademark Protection

Strategic advantages include Stronger Brand Recognition (Colours often create instant consumer recall), Competitive Differentiation (Distinctive colours help businesses stand apart from competitors), Enhanced Intellectual Property Portfolio (Colour marks strengthen overall brand protection strategies), Enforcement Opportunities (Registration may facilitate action against infringing competitors), and Increased Brand Value (Unique visual identifiers contribute significantly to brand equity) [cite: 14].

Common Mistakes Businesses Make

- **Waiting Too Long to Protect Branding:** Many businesses only consider trademark protection after competitors begin copying their visual identity [cite: 14].
- **Inconsistent Colour Usage:** Changing shades, tones, or colour arrangements weakens claims of distinctiveness [cite: 14].
- **Lack of Documentation:** Failure to preserve evidence of use often undermines applications [cite: 14].
- **Assuming Registration Is Automatic:** Colour marks face significantly higher examination standards [cite: 14].
- **Ignoring Trade Dress Alternatives:** Businesses sometimes overlook more practical protection strategies [cite: 14].

Frequently Asked Questions (FAQs)

1. Can a colour be registered as a trademark in India?

Yes. A colour or combination of colours may be registered if it distinguishes the applicant's goods or services and has acquired distinctiveness [cite: 14].

2. Are colour trademarks recognized under Indian law?

Yes. The Trade Marks Act, 1999 expressly recognizes combinations of colours as trademarks [cite: 14].

3. Is it easier to register a colour combination than a single colour?

Generally, yes. Colour combinations are often considered more distinctive [cite: 14].

4. What is acquired distinctiveness?

It refers to consumer recognition linking a colour with a specific business source [cite: 14].

5. Can a startup obtain a colour trademark immediately?

Usually not. Most applicants must establish extensive market recognition through prolonged use [cite: 14].

6. What evidence supports a colour trademark application?

Advertising records, sales data, consumer surveys, media coverage, and market studies are commonly used [cite: 14].

7. Can functional colours be trademarked?

No. Colours serving practical or utilitarian functions are generally not registrable [cite: 14].

8. What is the difference between a colour mark and trade dress?

A colour mark protects the colour itself, whereas trade dress protects the overall visual appearance of products or packaging [cite: 14].

9. Can competitors use a similar colour?

If the colour is not protected or lacks distinctiveness, competitors may be able to use similar colours [cite: 14].

10. How long does a colour trademark registration take in India?

The timeline varies depending on examination objections, evidence requirements, and opposition proceedings [cite: 14].

11. Can foreign companies register colour trademarks in India?

Yes. Foreign businesses may seek protection in India subject to statutory requirements [cite: 14].

12. Are colour trademarks enforceable against infringers?

Yes, provided valid rights exist and consumer confusion can be demonstrated [cite: 14].

13. What are non-traditional trademarks?

They include colour marks, shape marks, sound marks, motion marks, and other unconventional brand identifiers [cite: 14].

14. Can packaging colours receive protection?

Yes. Packaging colours may be protected through trademark registrations or trade dress rights [cite: 14].

15. Should businesses seek professional advice before filing?

Absolutely. Colour mark applications require careful legal evaluation and evidentiary planning [cite: 14].

Conclusion

As branding becomes increasingly visual, colour can evolve from a marketing element into a valuable intellectual property asset [cite: 14]. Indian trademark law recognizes colour marks, but obtaining protection requires demonstrating distinctiveness, consumer recognition, and non-functionality [cite: 14]. For most businesses, the challenge lies not in selecting a unique colour but in proving that consumers associate that colour exclusively with their brand [cite: 14]. Companies that consistently use and promote distinctive colours while maintaining strong evidence of market recognition stand the best chance of securing protection [cite: 14]. If your business relies on a distinctive colour scheme, packaging design, or other non-traditional branding elements, obtaining legal guidance at an early stage can help build a stronger and more enforceable trademark portfolio [cite: 14].