

# ILE CONSUMER PROTECTION LAW AND REVIEW

VOLUME 1 AND ISSUE 1 OF 2023



INSTITUTE OF LEGAL  
EDUCATION



**ILE Consumer Protection Law and Review**  
**(Free Publication and Open Access Journal)**

**Journal's Home Page – <https://cplr.ilededu.in/>**

**Journal's Editorial Page – <https://cplr.ilededu.in/editorial-board/>**

**Volume 1 and Issue 1 (Access Full Issue on – <https://cplr.ilededu.in/category/volume-1-and-issue-1-of-2023/>)**

**Publisher**

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

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## TRADEMARK OF SOUNDS: AN UNCHARTED TERRITORY

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**Best Citation** – MAYURI, TRADEMARK OF SOUNDS: AN UNCHARTED TERRITORY, *ILE Consumer Protection Law and Review*, 1 (1) of 2023, Pg. 31-39, ISBN - 978-81-961120-4-2.

### Abstract:

*With the growth of society, new types of Intellectual Property emerge in the society. One such type is the Non- Conventional Trademarks. They cater to all five senses and include colour, smell, sounds etc. In this research paper, we will be delineating myriad contours of sounds, a trademark. We will be throwing light on various aspects of sound marks like Non-Conventional Trademarks, sound marks, the psychology behind Sound Marks, Importance of Registering a Sound Mark, Registering of Sound Mark in Different Jurisdictions, Position of Sound Marks in European Union, Case of Shield Mark v Joost Kist, Sieckmann case, Position of Sound Marks in U.S.A, Position of Sound Marks in India, Process of Sound Branding in India, Requisites Needed to File a Sound Mark etc. The aim of this research paper is to discuss the "Conundrum of Graphical Representations of Sound Marks. Why all sounds cannot be trademarked?" We will also be asserting the reason why all sounds cannot be trademarked.*

**Keywords:** *Non- Conventional Trademarks, Sound Marks, Graphical, Representation, Etc.*

### I. INTRODUCTION

***"Sound is the vocabulary of nature"***

**-Pierre Schaeffer**

Since the days of yore, there has been no restriction in making content which presents a certain *je ne sais quoi* in the minds of the crowd. People have been engaged in creating a plethora of content that wrings their heart and tickles their intellect. With the passage of time,

the quantity of such creations increased and it became quite difficult to preserve the authority and authenticity of the original products. The need to preserve the rights of the ownership over goods became inevitable. The Intellectual Property Rights came to the rescue.

According to the World Intellectual Property Organisation, Intellectual Property Rights are "the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields."<sup>113</sup> The Convention Establishing the World Intellectual Property Organization (WIPO), concluded in Stockholm on July 14, 1967 (Article 2(viii)) provides that "intellectual property shall include rights relating to: - literary, artistic and scientific works, - performances of performing artists, phonograms and broadcasts, - inventions in all fields of human endeavour, - scientific discoveries, - industrial designs, - trademarks, service marks and commercial names and designations, - protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields."<sup>114</sup>

Intellectual property rights are the rights that have been given to somebody for a creation they make from their intellect. These rights for the most part give the maker of an idea, exclusive rights over the utilization of their mental creation. These rights will likewise apply for a specific amount of time.

Albeit intellectual property rights are regularly connected with corporate business conditions, they likewise assume a significant part in music

<sup>113</sup> Available at: <http://www.wipo.int/export/sites/www/about-ip/en/iprm> (last visited on March 26, 2023).

<sup>114</sup> Available at: [http://www.wipo.int/treaties/en/text.jsp?file\\_id=283854](http://www.wipo.int/treaties/en/text.jsp?file_id=283854) (last visited on March 26, 2023).

creation and the music business in general. Vocalists, lyricists, music makers, and musicians can and do bring in cash through their creative gifts.

It's comparatively simple to copy and sell someone else's music on various platforms. Also, music piracy is more common than ever before. Along these lines, intellectual property rights are critical. Copyrights, trademarks, and patents are basic for music makers who need to bring in cash in their exchange and want to preserve sole rights on their creation.

But the question is, "Can sounds be an intellectual property?", or "Is it practically possible distinguish sounds with expert precision?". Before delving deep into the world of melodies, let us talk about the Non-Conventional Trademarks and Sound Marks?

## II. NON-CONVENTIONAL TRADEMARKS

Trademarks usually performs the function of communicating to the public that the mark on the goods serve as a 'source identifier'<sup>115</sup>. As per S.2(1) (zb) of the Trade Marks Act, 1999, a 'trade mark' means, "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 colours."<sup>116</sup>

To qualify as trademark, it ought to be a mark that can be addressed graphically. The mark utilized ought to likewise be unmistakable and distinctive, for example it should empower purchasers to separate the merchandise of the trader from that of his rivals in the marketplace. It incorporates: "a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof."<sup>117</sup>

<sup>115</sup> Dev Gangjee, 'Non-Conventional Trade Marks in India' (2010) 22 National Law School of India Review 67.

<sup>116</sup> The Trademarks Act, 1999, § 2(1) (zb), No. 47, Acts of Parliament, 1999 (India).

<sup>117</sup> The Trademarks Act, 1999, § 2(1)(m), No. 47, Acts of Parliament, 1999 (India).

As the list provided is not exhaustive, there is scope to include non-conventional marks as marks.<sup>118</sup> With the advancement in the field of trademarks, a rather new segment of trademarks is emerging under the name of 'non-conventional' trademarks.

In the globalized period where cross border trade happens in international market, trademark has turned into a critical apparatus to indicate an organization's identity. A good trademark conveys its own picture, appends particular character to the goods and turns into the quintessence of competition. The 21st century trademark law reflects some original improvements concerning the show up of 'mark' itself. The 'advanced market' is in the bustling system of developing new items with 'typical scent', 'exceptional touch' and 'one-of-a-kind sound' to introduce more 'sensory customary goods' to the 'modern consumers'. Although these original trademarks have not yet arrived at a high acknowledgment in all legislatures, utilization of such marks is normal in contemporary market. In the present times, new types of tactile trademarks have come to be worldwide acknowledged as intellectual property as the consequence of legislative amendments or judicial interpretations. In the modern market, non-traditional trademarks actually continue creating a practice and the case-law on this topic is advancing.

These are widely acceptable and have been included in many legislations and international treaties such as Agreement on Trade Related Aspects of Intellectual Property Rights. As a result, the term "Non-Conventional Mark" refers to a mark that transcends the traditional conventional category of being judged solely by eye. These include trademarks for smell, sound, taste, motion marks, position marks, hologram marks, slogans, feel marks etc.

There are non-traditional trademarks which cater to all five senses. They would contain any

<sup>118</sup> Dev Gangjee, 'Non-Conventional Trade Marks in India' (2010) 22 National Law School of India Review 67.

(i) visible signs such as colour, shapes, moving images, holograms etc. or

(ii) any non-visible signs such as smell, sounds, taste or textures.<sup>119</sup>

The Manual (Draft) of Trademarks Practice and Procedure of Indian Trademark Registry, 2015 states that colour, sound, shape of goods, packaging and smell trademarks fall under the category of unconventional trademarks.<sup>120</sup>

### III. WHAT ARE SOUND MARKS?

Songs, notes (with or without jingles), well-known natural sounds, and unusual sounds are all examples of sound trademarks, which are also referred to as aural marks or audio signatures. The Yahoo yodel, Metro Goldwyn Mayer's roar of the lion or Nokia tunes etc. remind us about the specific sounds that help us to visualize the associated product in our memory. Sound marks or Sound Trademarks are sounds that are unique to a distinct domain and possess features that make them recognizable to a community or a specific demographic.<sup>121</sup> They are enormously denotative as they evoke instantaneous recognition and prompt acknowledgment from their crowd. Thus, sound imprints are socially and generally critical, and along these lines warrant shielding and protection from unauthorized usage.

Sound marks made their first presentation towards the end of the 1940s, and from that point onwards, they have been considered as a dynamically significant instrument for brands. As a result of this, consumers over a period of time tend to associate certain sounds as a source identifier or as a badge of origin. Sound

mark can be in the form of an onomatopoeia and musical notes.<sup>122</sup>

### IV. THE PSYCHOLOGY BEHIND SOUND MARKS

Psychologists and neurologists state that music invokes a substantially emotional response in our brains. At some point, we've all turned off the radio because a particular song takes us back to a poignant point in our lives.<sup>123</sup>

Similar to the sense of smell, music, in its various forms, has the power to rekindle feelings, sensations, and cravings. It is safe to assume that a common sound mark has the potential to endure time and remain in the listener's mind for many years to come.

Studies indicate that the repetition of a melody affects the neural circuits in the brain that are responsible for the production of the happy hormone serotonin, although the exact cause of this neurological trigger is unknown. This therefore initiates a discernment called 'nostalgic trigger.' a clear victory for businesses that were able to make use of this idea for the benefit of their brand.

### V. IMPORTANCE OF REGISTERING A SOUND MARK

There is a plethora of advantages for the creators and corporate houses by registering a sound mark. They are:

#### a. Sound marks are an essential component of Branding

As the sound marks are uniquely distinctive audio clips, they activate listeners' auditory senses, which facilitate the identification of the brand. Just like a brands' visual logo operates as a visual aid to further identify your brand, sound marks have the same effect on its consumers. The sound marks build an image of the product or the service in the mind of the listener and helps them to identify and recognize the product or service with an ease. Registering a sound mark is

<sup>119</sup> Harsimran Kalra, "Unconventional Trademarks: The Emergent Need for a Change" 4 India Law Journal (2007), available at [http://www.indialawjournal.com/volume/4/issue/article\\_by\\_harsimran.html](http://www.indialawjournal.com/volume/4/issue/article_by_harsimran.html) (last visited on March 26, 2023).

<sup>120</sup> Sr. No. 3 2.4 of Draft Manual, 2015 at 143, available at [http://www.ipindia.nic.in/tmr\\_new/TMR\\_Manual/TMR\\_DraftManual\\_11March2015.pdf](http://www.ipindia.nic.in/tmr_new/TMR_Manual/TMR_DraftManual_11March2015.pdf) (last visited on March 26, 2023).

<sup>121</sup> Sound Mark and Intellectual Property, available at <https://abounaja.com/blogs/sound-mark> (last visited on March 26, 2023).

<sup>122</sup> Tobias Cohen Jehoram, Constant Van Nispen and Tony Huydecoper, European Trademark Law, Community Trademark Law and Harmonized National Trademark Law (Wolters Kluwer 2010).

<sup>123</sup> Sound Mark and Intellectual Property, available at <https://abounaja.com/blogs/sound-mark> (last visited on March 26, 2023).

really important as it makes the product or the service provided different from that of others, for example- the chirping of the birds or the sound of the footsteps are some very common sound marks and therefore cannot be registered.<sup>124</sup>

b. Sound marks Invigorate Commonality and Emotional Affiliation

Sound marks have the established knowledge of the product. Specialists clarify there's huge force in utilizing the strength of a well-known melody and appending it to an item. This permits the melody's feeling to be moved to the item's image.

c. They're intended to be Infuriatingly Critical

Organization logos can be perceived while we look by them, eyes stuck to our phones. Just sound marks, however, have the ability to look for endless shelter and tend to linger in our mind for quite a long time.

d. Sound marks are Convincing and Persuasive

Music has the interesting capacity to implant messages in the mind of consumers. At the point when words are placed in melodic structure, their signification is escalated, making them stronger and more compelling.

## VI. REGISTERING OF SOUND MARK IN DIFFERENT JURISDICTIONS

With the passage of time, the trend of Sound trademarks has spread around the globe. Many of the countries like U.S.A, Australia, etc have included 'sound' in the definition of their trademarks laws by making time to time amendments.<sup>125</sup> The United States Patent and Trademark Office is taking the lead by registering distinctive trademarks. In Australia, the Trade Marks Act was revised in 1995 to widen the definition of a trade mark to explicitly incorporate shape, colour, sound, or aroma. It then took nearly a decade for the European

Court of Justice to conclude that sounds could function as trade-marks in Europe. Most recently, India granted its first sound mark for the Yahoo "yodel".<sup>126</sup>

## VII. POSITION OF SOUND MARKS IN EUROPEAN UNION

In the European Union, the Article 4 of the Council Regulation (EC) No. 40-94 of 20 December 1993 clearly states that any CTM (Community Trade Mark) may consist of "any signs capable of being represented graphically, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings".<sup>127</sup>

### A. Case of Shield Mark v Joost Kist

In *Shield Mark v Joost Kist h.o.d.n. MEMEX*<sup>128</sup>, the EU got an opportunity to clarify its position regarding sound marks. *Shield Mark* held about 14 trademarks related to various products and services. About four of these were related to Beethoven's musical composition, *Fur Elise*. These marks were described on a musical staff.<sup>129</sup> Two of these marks specifically stated that the claim was for a sound mark that consisted of musical notes transcribed on the staff.<sup>130</sup> Further, three other marks were claimed which consisted of sequences of musical notes that were not represented on the musical staff.<sup>131</sup>

*Shield* also applied for two other sound marks that consisted of the onomatopoeia 'Kukelekuuuuu' hinting that it is an imitation of a cock crow. Mr Kist used Beethoven's *Fur Elise* musical composition for advertising and he also used the cockcrow for a computer program.<sup>132</sup> *Shield* brought an action for trade mark infringement as it had been awarded sound mark for the musical composition of Beethoven's *Fur Elise* as well as for the

<sup>124</sup> Anirudh, Sound Marks: an unfamiliar perspective in the books of Indian Trademark History, Legal Services, India, available at: <https://www.legalserviceindia.com/legal/article-3292-sound-marks-an-unfamiliar-perspective-in-the-books-of-indian-trademark-history.html> (last visited on March 26, 2023).

<sup>125</sup> Ibid.

<sup>126</sup> Available at: <http://www.iposgoode.ca/2010/10/the-unconventionality-of-sound-marks/> (last visited on March 26, 2023).

<sup>127</sup> <https://www.legislation.gov.uk/eur/1994/40/contents>

<sup>128</sup> C-283/01

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

onomatopoeia 'Kukelekuuuuu'.<sup>133</sup> Question arose as to whether musical notes represented through musical stave and onomatopoeia could be granted trade mark protection. This question was referred to the ECJ by the Dutch Courts.<sup>134</sup>

The ECJ opined that any sound, be it musical notes or onomatopoeia are perceptible by humans.<sup>135</sup> If marketed and advertised properly then consumers can come to associate that certain sound marks are used as a badge of origin.<sup>136</sup> It observed that sound marks can also be represented graphically without causing any confusion. Thus, in principle, the ECJ indicated that sound marks can get trade mark registration. However, it added that graphical representation has to meet the criteria specified in Sieckmann case, i.e., it should be clear, precise, intelligible, stable, durable, objective, self-contained and easily accessible.<sup>137</sup>

### **B. Sieckmann case**<sup>138</sup>

This is a landmark case in the history of olfactory trademarks. In this case, the applicants filed for the registration of the smell of 'methyl cinnamate' and described it as 'the smell of balsamically fruity with a slight hint of cinnamon'. The request was however rejected on the grounds that it is unobvious to the average consumer. This case did not consider and ruled out written descriptions, chemical formulas, samples, electronic sensory analysis and graphic profiles as a means of identification of the smell.<sup>139</sup>

There were also cases of successful registration in the field like floral fragrance similar to roses for tyres by Sumitomo Rubber Co's (Application No. 2001416, 31 October 1994), smell of beer applied to flights for darts Unicorn Products' (Application No. 2000234, 31 October 1994) etc.

Applying the Sieckmann criteria to the Shield Mark case, the European Court of Justice concluded that the sound represented by a musical note on a musical stave satisfies all of the Sieckmann criteria. The ascent and fall in pitch are obviously perceived by an understanding individual of the music and can without much of a stretch measure up to other sound marks. In any case, any composed depiction portraying the sound would not meet the Sieckmann rules as words don't obviously and definitively demonstrate the ascent and fall in the pitch and as such it is hard to think about when encroachment claims are raised or for the motivations behind an exchange mark search.

### **VIII. POSITION OF SOUND MARKS IN U.S.A.**

In the United States, the test for whether a sound can fill in as a trademark "relies upon the aural impression of the audience which might be just about as temporary as the actual sound except if, obviously, the sound is entirely innately unique or particular, to the point that it connects to the subconscious psyche of the audience to be stirred when heard and to be related with the source or occasion with which it struck".

This was the genuinely severe test applied by the US Trademark Trial and Appeal Board on account of General Electric Broadcasting Co., 199 USPQ 560, according to the timed toll of a ship's bell clock.

More famously, Harley-Davidson attempted to register as a trademark the distinctive "chug" of a Harley-Davidson motorcycle engine. On February 1, 1994, the company filed its application with the following description: "The mark consists of the exhaust sound of applicant's motorcycles, produced by V-twin, common crankpin motorcycle engines when the goods are in use." Nine of Harley-Davidson's competitors filed oppositions against the application, arguing that cruiser-style motorcycles of various brands use the same crankpin V-twin engine which produces the same sound. After six years of litigation, with no

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> Ibid.

<sup>138</sup> Case C-273/00 Ralf Sieckmann v Deutsches Patent- und Markenamt

<sup>139</sup> Ibid.

end in sight, in early 2000, Harley-Davidson withdrew their application.<sup>140</sup> The companies that have been more successful in registering their distinctive sounds include MGM and their lion's roar; the NBC chimes; famous basketball team the Harlem Globetrotters and their theme song "Sweet Georgia Brown"; Intel and the three-second chord sequence used with the Pentium processor etc.

## IX. POSITION OF SOUND MARKS IN INDIA

In the past 10 years, the Trademark protection in India has improved tremendously. A reading of Sections 2(1) (zb)<sup>141</sup> and 2(1)(m)<sup>142</sup> of the Act shows that the definition of "trade mark" has been widened to include shapes, packaging and combination of colours. As specified in the Trade Marks Manual<sup>143</sup>, this is an inclusive definition including any mark as long as the mark is capable of being represented graphically and capable of distinguishing the goods or services of one person from that of the others. However, it has been stated that during registration, colours, shapes, sounds, and smells will require "special consideration." The introduction of trademark rules in 2017 that is on 6th march 2017 was possible simplified the filling of non-conventional or the sound trademark was made which means the sound can be made registrable.

### A. Process of Sound Branding in India:

1. Sound branding is a perplexing cycle which empowers consumers to distinguish the result of a specific brand. Also, the consumer, by listening the sound, can recognize that whether the brand is of a food item, electronic gadgets, etc.
2. As their new guidelines were presented under the Trademark act, 1999, there were some vital features to it which were as following:

3. Individuals applying for the trademark under the new trademark guidelines especially the small enterprises or the new companies were given a supportable discount in the authority expenses to be paid by the government, promoting their business.
4. A rise in the expenses to be paid by the applicants can be seen yet around half of discount is being given to the limited scale endeavour and star-ups.
5. Sound mark under the new principles can be enrolled in a **MP3** design empowering the trademark authorities to keep a record with ease.

### B. Requisites Needed to File a Sound Mark:

Rule 26(5) of the 2017 Trademark Rules states that the applicant for the sound mark must ensure that the sound only needs to be reproduced in MP3 format and that its duration does not exceed 30 seconds. The sound was recorded in MP3 format because it has good sound quality and is easy to listen to for the listener. Some well-known examples of the registered sound marks are<sup>144</sup>:

1. Audi's heart-beat sound logo
2. McDonald's sound mark "i'm lovin'it"
3. Nokia and Samsung (switching on device sound)
4. Britannia (four note bell sound)
5. Yahoo (human voice saying hello)
6. Airtel ringtone

## X. CONUNDRUM OF GRAPHICAL REPRESENTATIONS OF SOUND MARKS. WHY ALL SOUNDS CANNOT BE TRADEMARKED?

Businesses show a flair for pairing pleasant sounds with their products in order to hype the sales. However, the Sound Trademarks typically posit complications due to the requirement of a graphical representation of it to be registered as a mark.

<sup>140</sup> O'DELL, JOHN (2000), Los Angeles Times, ISSN 0458-3035.

<sup>141</sup> The Trademarks Act 1999, No. 47, Acts of Parliament, 1999 (India).

<sup>142</sup> The Trademarks Act 1999, No. 47, Acts of Parliament, 1999 (India).

<sup>143</sup> See, Draft Manual Ch II, at 5.2.2 ("applications for sound marks must clearly state that they are sound marks").

<sup>144</sup> Anirudh, Sound Marks: an unfamiliar perspective in the books of Indian Trademark History, Legal Services, India, available at: <https://www.legalserviceindia.com/legal/article-3292-sound-marks-an-unfamiliar-perspective-in-the-books-of-indian-trademark-history.html> (last visited on March 26, 2023).



The Trademark manual affirms that the Trademarks Act neither expressly bars sound marks from enrolment nor does it specify that a trademark should be visually perceptible. The act lays just that the trademark should be "equipped for being addressed graphically" other than being fit for recognizing distinctively. Consequently, a trademark might comprise of a sound and be addressed by a progression of melodic notes, with or without words. The manual expresses that no sound marks will qualify, at first sight, for acknowledgment without proof of uniqueness. Specifically, straightforward pieces of music comprising of just a couple of notes, melodies generally utilized as chimes and nursery rhymes for products focused on children would not qualify as sound marks.

The ECJ in the landmark case of *Shield Mark BV vs. Joost Kist* analysed various trademarks and laid the standards for Graphical Representation. Court said that the written description of sound lacked precision and clarity and hence it cannot constitute a graphical representation. Regarding on *Onomatopoeia*, the ECJ noted that there was a difference between the sound sought to be trademarked and the onomatopoeia, once pronounced. Therefore, there was no precision and clarity; hence it did not constitute graphical representation.<sup>145</sup>

In *Sieckmann* case, the court went a little further and said, "Those requirements are not satisfied when the sign is represented graphically by means of a description using the written language, such as, an indication that the sign consists of the notes going to make up a musical work, the indication that it is the cry of an animal, or by means of a simple onomatopoeia, without more, or by means of a sequence of musical notes, without more. On the other hand, those requirements are satisfied where the sign is represented by a staff divided into measures and showing, in particular, a clef, musical notes and rests whose form indicates

the relative value and, where necessary, accidentals."<sup>146</sup>

However, as a matter of fact, not everyone can read written music. Additionally, while written musical notes will typically indicate pitch, they will not typically indicate tone, and various tones may be utilized; in other words, musical notes provide a "description" of the music but not the music itself. Instead of submitting a graphical representation, an obvious solution would be to submit a digital recording of the sound to the registrar. The Court made an apparent endorsement of the potential of sound trademarks by noting that people can perceive sounds and noises and that, like visual representations, they can be remembered and recalled.

In 2005, OHIM (Office of Harmonization in the International Market, known as European Union Intellectual Property Office after March 23, 2016) accepted representation by means of a sonogram accompanied by the sound file to make the representation clearer, it is suggested that a written description of the sound too should be given. To further ease out the process, it did not make crucial the criteria that the description should exactly match the sonogram.

Further, the EU has also granted sound marks to non-musical representation of sound like the *Tarzan's yell* and the *Metro Goldwyn Mayer's roar of the lion* if the same application is accompanied by a spectrogram or sonogram images.<sup>147</sup> Devices that clearly indicate the rise and fall in pitch and also record the frequency can clearly and precisely indicate the scope of the sound marks.<sup>148</sup> Thus, all applications accompanying non-musical sound marks

<sup>146</sup> Sound: An Unconventional Trademark, available at <https://www.lawctopus.com/academike/sound-unconventional-trademark/> (last visited on March 26, 2023).

<sup>147</sup> Earlier attempts to register the lion roar by MGM and *Tarzan's yell* by the estate of Edgar Rice Burroughs were not successful in EU. However, subsequently these applications were granted sound marks as amended applications with images of the sonogram (along with proper readings) and sound samples or recording was submitted to the Trademark Office.

<sup>148</sup> Tobias Cohen Jehoram, Constant Van Nispen and Tony Huydecoper, *European Trademark Law: Community Trademark Law and Harmonized National Trademark Law*, Wolters Kluwer, 2010.

<sup>145</sup> Vatsala Sahay, "Conventionalizing Non-Conventional Trademarks of sounds and scents: A Cross jurisdictional Study", *NALSAR law Review*.

should contain spectrogram or sonogram images that contain frequency and time graphs.<sup>149</sup>

#### A. Indian Context

Unfortunately, India has not updated its law and keeps on underwriting the Shield Mark standard. Sound marks are seen as non-conventional and the best test to their enlistment lies in their failure to be graphically addressed, which is a precondition to enrolment.

Three non-conventional trademarks have received registration in India so far. Yahoo!'s yodel is the first non-conventional mark to be registered. The yodel was represented through musical notes.<sup>150</sup> The shape of the Zippo lighter was also granted registration, which was later confirmed in a trademark infringement suit in the Delhi High Court, on the ground that it was distinctive.<sup>151</sup> The latest non – conventional to be registered is a sound mark, held by a German company Allianz AG.<sup>152</sup>

### XI. CONCLUSION

To conclude, we see that the process of getting a sound mark registered especially in India, is a crucial one. We see that not all sounds can be trademarked because courts contend that if we do so, there will be the monopoly over the very general sounds of nature and that would lead to 'Trade Pessimism' and restriction in trade. The new rules in the Trademark act are a tremendous efforts done by the government which will help in the economic development and will encourage more and more star ups and small-scale business.

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<sup>149</sup> Ibid.

<sup>150</sup> Peter Ollier, Yahoo Yodels into India's TM Registry, 183 MANAGING INTELLECTUAL PROPERTY 14 (2008); Shamnad Basheer, India's first "Sound Mark" Registered, SPICYIP, 19 August, 2008, available at <http://spicyipindia.blogspot.com/2008/08/breaking-news-indias-first-sound-mark.html>. (last visited on March 26, 2023).

<sup>151</sup> Zippo v. Anil Manchandani (unreported, CS (OS). 1355/2006).

<sup>152</sup> Santosh Singh, Yet Another Sound Mark Granted, SPICYIP, 30 July 2009, available at <http://spicyipindia.blogspot.com/2009/07/yet-another-sound-mark-granted.html> (last visited on March 26, 2023).

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