

Hospitality Industry and Trademark

We are all aware of the Trademark battle of the famous milkshake chain – Keventers. It triggered with the Keventers store opening of in the capital’s famous mall, with new aesthetics and a different format, using the brand name “KEVENTERS”, providing an exhaustive range of products.

It was in 1925, a dairy company was started by Edward Keventers with farms in Aligarh, Delhi, Calcutta, and Darjeeling. In the 1940s, the Delhi plant was acquired by Ram Krishna Dalmia, with 48 distribution outlets across the capital, including the famous one in Connaught Place, offering a wide range of dairy products such as milkshakes and cold coffee. In the 1970s, the re-acquisition of land by the Government led to the shutdown of the farm. That, among other reasons, led to the dissolution of the brand “KEVENTERS”, with the Connaught Place franchisee retaining the brand “KEVENTERS”. The original owners, Dalmia, and his partners launched the chain with the brand “KEVENTERS” in a new format asking the franchisee to change the name of the Connaught Place outlet due to the trademark ownership issues and promised to maintain the same standard of quality. This issue is one such example of the trademark battles between trademark owners and franchisees’ who put in a lot of effort to maintain quality standards and also play a major role in the expansion of the brand; not being owners of the trademark, leads to a hindrance in the business whenever issues arise in the ownership of the same.

Another such issue of re-branding arose in July 2021, when the ‘All American Diner’, owned and managed by the Old World Hospitality Pvt. Ltd. was shut down and replaced by the ‘Habitat Hub’, to be managed by the India Habitat Centre. Old World Hospitality Pvt. Ltd. had several restaurants in the India Habitat Centre including ‘Delhi-O-Delhi’ and ‘Oriental Octopus’. However, due to the expiration of the contract between India Habitat Centre and Old World Hospitality, the ‘All American Diner’ had to be shut down. It is pertinent to note that the trademark for “ALL AMERICAN DINER” had been registered by Old World Hospitality under Class 43 since 2017 and is valid till 2030. The India Habitat Centre has now started its restaurant in place of the ‘All American Diner’ the ‘Habitat Hub’ with the same interior, staff, and menu. It is pertinent to mention that India Habitat Centre at New Delhi,



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was very well recognized owing to the single branch restaurant 'All American Diner', which was amongst the well-known restaurants in New Delhi, being recognized under the said brand name and not known by Old World Hospitality.

Further, India Habitat Centre uses the trademark 'Habitat Hub', for the old restaurant with the same interior, staff, and menu; it is unlikely that a case for trademark infringement may arise since Old World Hospitality did not get more holistic protection by registering trademarks of its menu items or other related services. Hence, it will be easier for the India Habitat Centre to continue the legacy left by the 'All American Diner' through the 'Habitat Hub'.

In 2012, another trademark ownership issue had cropped up between the trademark owner, its employees, and the franchisee, who were equally involved in building up the brand reputation and goodwill. Sagar Ratna Restaurants Pvt. Ltd., a registered company, had entered into a franchise agreement and supplementary agreement, allowing the franchisee to open a South Indian Restaurant in the name of "SAGAR RATNA" at Vrindavan, which was illegally terminated by the franchisee. The franchisee continued to use the brand name "SAGAR RATNA". Further, Sagar Ratna Restaurants Pvt. Ltd., had planned to launch its new brand names "SAGAR RATNAM" & "RATNAM" and had taken steps to get the said trademarks registered. The employees of the said company, who were in knowledge of the said proposed brand names, launched the chain in association with the franchisee, under the brand name "SHREE RATNAM" and misrepresented the same to be associated with Sagar Ratna Restaurants Pvt. Ltd. The franchisee and the employees also applied for registration of the brand name "SHREE RATNAM".

Such conflicts are an eye-opener for the franchise fraternity. Such unforeseen acts by a loyal franchisee and ex-employees of an ex-franchisor may lead to a major setback in the franchisee-franchisor relationship, as in the present case; thereby leading to competition in the market between the old restaurant chain and the newly built one.

Introduction

The hospitality industry of India has become an extremely vital service provider across the nation. With the rise in tourism, the role of hotels and restaurants has only increased. This allows hotels and restaurants to build a brand name in the hospitality sector. Developing a brand name would allow the hospitality service provider to avail the benefits of a huge number of customers as well as a good reputation. However, with brand names of hotels and restaurants becoming popular there lies a risk of other such service providers in the industry misusing this popularity for their unfair gains. To safeguard one's own business in the hospitality industry, hotels and restaurants can seek protection through Intellectual Property Rights, specifically by registering their brand name and logo as trademarks. This article deals with the relation between the hospitality sector in India and trademarks law. It also analyzes the recent trends and changes that have developed about the importance of trademark protection in the hospitality industry.

Trademark and its Relation with the Hospitality Industry

Trademark refers to any mark being represented graphically and capable of being distinguished from the marks of goods and services of others. A mark can comprise a device, brand, heading, label, word, letter, a combination of colors, among others. Hotels and restaurants can get their brand

name and logo registered as a trademark for ease of doing business in India. The business needs to identify the Class under which their goods and services fall. This is identified through the NICE Classification adopted by India which added Class 43 for hotels and restaurants in 2010. Trademark registration for hospitality service providers thus falls under Class 43 which includes services provided by persons or establishments that prepare food and drink for consumption and services given for bed and boarding in hotels, boarding houses, and other establishments providing temporary accommodation. However, certain services cannot be registered for under Class 43. This includes rental services for real estate including houses, flats, for permanent use; arranging travel by tourist agencies; preservation services for food and drink; discotheque services; boarding services and rest and convalescent homes.

Furthermore, to secure a more holistic and broader intellectual property protection, hotels and restaurants can also register their trademarks under certain other Classes to secure the varied services provided by them. These consist of –

- Class 3 – This class deals with soaps, perfumery, essential oils, cosmetics, etc. Businesses in the hospitality sector developing their soaps and cosmetics as products solely belonging to the concerned hotel can protect the same by registering it as a trademark under this class.
- Class 16 – This class comprises stationery materials including printed matter, letterheads, office requisites, etc. Businesses in the hospitality sector can register the trademarks for products falling in this class such as printed matter, distinctive menus, cards, letterheads, notepads, pencils, etc.
- Class 25 – This class deals with clothing, footwear, and headgear. Staff working in hotels and restaurants have to wear a prescribed uniform with embossed logos, hence, the brand names may be registered as a trademark under this Class for protection from any kind of infringement.
- Class 35 – This class deals with advertising, business management, business administration, and office functions. Hotels and restaurants may get their brand name for services revolving around advertisement, hotel customer incentive programs, administration of consumer loyalty programs, etc., registered in the said class.

Trends Regarding Trademarks vis-à-vis Hospitality Sector

Over the past few years, India has seen a surge in the tourism industry. The industry contributed 121 billion US Dollars to India's GDP in 2020 and is only set to reach 512 billion US Dollars by 2028. The growing need and business of hotels and restaurants have made it essential for them to secure their intellectual property rights. The registration of trademarks under Class 43 has seen a significant rise since 2016-17. The Annual IP Report of 2016-17 showed that only 7034 trademarks were registered under this Class. A slight increase was witnessed in the 2017-18 Report where 9100 applications were registered. The Report for the subsequent year, i.e., 2018-19 depicted a total of 12438 applications being filed with 10175 trademarks being registered under Class 43. This rising graph is also reflective of the growing trends in trademarks and the hospitality industry.

Trademark of Places with Architectural Significance – The Taj Mahal Palace Hotel Case

The Indian Hotels Company Limited applied and obtained registration of a trademark for the Taj Mahal Palace Hotel, Mumbai. This was the first-ever hotel to receive registration of a trademark for its building. The trademark had been registered under Class 43 for the image and the Tower Wing Exterior of the Hotel. Similar trademarks have also been attained internationally comprising of the Empire State Building in New York, Eiffel Tower in Paris, and the Sydney Opera House in Australia.

This has broadened the scope of trademark registration under Class 43. With the trademark of the Taj Hotel getting registered, Indian Hotels Company can ensure protection from the following –

- Other entities using the image of the Hotel for commercial purposes without proper authorization.
- Entities selling products with the image of the Hotel. Such an act would amount to trademark infringement.

Trademark protection for the Taj Mahal Hotel is essentially stronger than copyright protection or a design registration since they deal with the protection of the aesthetic value of the property and increasing its commercial value, respectively. Registering the architecture of the Hotel results in the landmark acting as a source indicator and generating more commercial revenue. Moreover, it has been held in *Rock and Roll Hall of Fame and Museum v. Gentile Production*¹ that for a building to be registered as a trademark it must create a distinct commercial impression which performs the trademark function of identifying the source to the customers.

Therefore, registration of the trademark of the architecture of landmark hotels and restaurants can protect the proprietor's and the hotel's reputation. They will also become a distinct brand, consequently attracting more customers.

Destination Brandings through Trademark

The Hospitality Industry has also grown with the concept of Destination Branding finding its relevance in the tourism sector. Destination Branding deals with the concept of promoting one specific place or location through a logo or tagline. This is then protected through the intellectual property law of trademarks. Destination Branding acts as an incentive for the customers or consumers to visit the place and enjoy the experience guaranteed by the promoter. This was initially started to promote tourism in different cities and states in India and worldwide. For instance, the campaign launched by Malaysia, "Malaysia, Truly Asia", in 1999 attracted millions of tourists and garnered huge revenues. Similarly, India has also promoted its cities and states with rich cultures through such campaigns. It is pertinent to note that the logos and taglines of these campaigns have also been registered as a trademark to avoid any misuse or misappropriation. Some of these include –

- "Incredible India" – The Incredible India campaign was launched in 2002 to advertise and promote the rich culture and heritage of India. The logo and wordmark had been registered

¹ 134 F. 3d 749 (6th Cir. Ohio 1998).

by the Ministry of Tourism, Government of India in 2007 under Class 39. This class relates to transport, packaging, and storage of goods and travel arrangements.

- *“Kerala – God’s Own Country”* – The Kerala Tourism Development Corporation (KTDC) had started the promotion and marketing of Kerala’s culture, wildlife, food, backwaters, etc. The trademark for the same was registered as a device trademark by the Department of Tourism, Government of Kerala, in 2019. This was registered under Class 35 for advertising in the field of tourism and travel.
- *“Madhya Pradesh – Heart of Incredible India”* – Madhya Pradesh tourism was promoted through various advertisements and by using the logo representing a tiger for being known for its tiger reserves. Madhya Pradesh State Tourism Development Corporation Limited registered it as a trademark in 2010. This was also registered under Class 35 for the advertising business.

Thus, various campaigns and entities carrying out the promotion of tourism in different cities get their logos, taglines, and other related marks registered as a trademark to ensure holistic protection. However, Destination Branding can fail in case of political instability in the region or inadequate implementation of measures in the concerned region for the enhancement of tourism.

Big Hotel Chains, Restaurants, and Trademark

Big hotel chains in India have understood the significance of protecting their services and goods through intellectual property rights. This is carried out to ensure holistic protection of the products and services rendered by the hotels. These can include accommodation services, boarding facilities, advertisement businesses, stationery items, cosmetics, soaps, shampoos, clothing items, among others. Hence, known and branded hotel chains like Hyatt, Oberoi, Radisson, JW Marriott, Shangri-La, etc. have registered their services and products as trademarks under various classes. Certain examples include –

- Oberoi Hotels Pvt. Ltd. – This chain of hotels has registered its wordmark “OBEROI”, “OBEROI RESIDENCES”, “OBEROI SPA”, under Class 43. Further, its mark “OBEROI” was also registered under Class 16 for paper and printed articles, stationery, printed matters. Trademark registration was also sought for “OBEROI ONE” under the same class in 2020 for printed publications related to customer loyalty and member benefits programs. The Hotel’s soaps, shampoos, and other related products have also been registered under Class 3. Earlier, the trademark had also been registered under Class 30 for coffee and tea, which has now been removed.
- Radisson Hotels International Inc. – Several trademarks have been registered under Class 43 for “RADISSON RED”, “RADISSON MEETINGS”, “RADISSON INDIVIDUALS”, and “RADISSON BLU”. Moreover, under class 16, the trademark has been registered for the mark

“RADISSON”, “RADISSON GOLD AWARDS” for hotel reservation services, accommodation services, and award programs for customers. A registered trademark also exists for the Hotel under Class 35 of retail gift shop services. Bathrobes, hats, shirts, jackets, and other clothing items produced under the name of the Hotel have also been trademarked under Class 25 along with its cosmetics, soaps, and shampoos under Class 3.

- Hyatt International Corporation – Hyatt hotels have registered its mark and logo “HYATT”, “HYATT HOUSE”, “HYATT PLACE”, “HYATT REGENCY”, “HYATT ZIVA”, “HYATT TRULY” and “HYATT CENTRIC”, as trademarks under Class 43. Apart from this, the mark of the Hotel in Hindi has also been registered under the same class. Similar to the above two examples, its stationery, printed matters, and brochures have been registered under Class 16. “HYATT PURE” has been registered for clothing articles including bathrobes, beachwear, belts, caps, knit shirts, etc. under Class 25. Its cosmetic and skincare products under the same name “HYATT PURE” have been registered under Class 3.

Thus, it is evident how hotels and restaurants should aim for all-inclusive trademark protection. They can protect their distinctiveness, brand name, reputation as well as protection from usage of any fraudulent marks.

Conclusion

It is apparent that with the increase in tourism, hotels, and restaurants seek to enhance the hospitality sector by ensuring they have adequate intellectual property protection in the form of trademarks. Businesses in the hospitality industry must trademark their goods as well as services to enjoy the benefits of branding, maintaining exclusivity, and increasing their clientele. Intellectual property assets are becoming more essential given the rising competition in the hospitality sector. Certain relevant criteria that need to be identified by hotels and restaurants include geographical considerations and the determination of appropriate classes under which the trademark should be registered. Business owners in this sector should secure the right intellectual property protection as early as possible.

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