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ABSTRACT:

“In today’s highly competitive market, companies have spent a lot of money, time effort building their brand image and Goodwill. They work hard to make their products different from their competitor’s so that consumers can easily recognise and choose them. Things like the scent, colour, shape and sound of products have been an important factor in how people identify brands. Because of this there are greater chances of trademark problems like infringement, passing off or description which can harm business and their deputations this is where “unconventional trademarks” come in. These are trademark that go beyond just names and logos they include unique aspects like sounds, colours, shapes and even scents. However, in India unconventional trademarks are still new concept and there isn’t much legal guidance on them. Even though trademark international agreements like TRIPS, exists trademark laws differ from country to country, making things more complicated. not all types of unconventional trademarks are fully accepted in India or globally. This paper will mainly focus on examining how unconventional trademarks are treated in developed regions like the European Union and The United States and then look at Indias position in these marks. Based on this the research paper mainly offers suggestions on how India’s legal framework around unconventional trademarks can be improved. it will also explain the evolution and types of unconventional marks to better understand them”.

Keywords: Unconventional Trademarks, Treaties, Legal Framework, Goodwill, Branding.

1. INTRODUCTION:

In today’s world, branding is very important for businesses to succeed. Companies are always looking for new ways to stand out from their competitors. Generally, conventional trademarks, like names, logos or symbols, are being used for marketing for good and services. Recently, the use of non-conventional trademarks has been noticed in the market. These are trademarks

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that are different from the conventional ones.¹ Non-conventional trademarks include colours, sound, shapes, holograms or even smells.

SOUNDS:

Sound plays a vertical role in the branding of a product. A recognisable tune of music can be associated with the brand by the consumers. For example, the sound of Tom and Jerry Cartoon film background Music. Also, the ICICI Bank Jingle is a short musical tune used in their advertisement and communication helping customers instantly recognise the brand.

SHAPES:

Shape is also an important kind of non-conventional trademark. It plays a vertical role in the non-conventional trademarks. For example, Zippo lighters, known for its metal lighters, has a trademarked shape of its slider which has a unique, rectangular design with rounded edges. This shape is protected, making Zippo easily identifiable by its product design.

SCENTS/SMELL:

Smell plays a unique role as a non-conventional trademark. For example, the toy company Play-Doh has a distinct sweet vanilla smell. This smell is protected as a trademark because it is strongly associated with the product and with the brand.² Another example, is of the tennis ball which have a unique smell of a grass.³

TOUCH/TEXTURE:

In order to protect a product's trademark as a trademark the surface of the product must feel unique when touched. This kind of trademark can we include patrons or shapes that people fill with their fingerprints companies have started using this idea to appeal to customer especially those who are visual impaired. The first example of a texture mark was in 2004 when Diego a

¹ Tanusree Roy, Registrability of Smell Mark as Trademark: A Critical Analysis, 4 Journal on Contemporary Issues of Law 121, 121-130 (2018).

² Smell, Sound and Taste-Getting a Sense of Non-Traditional Marks, WIPO http://www.wipo.int/wipo_magazine/en/2009/01/article_0003.html, last seen on 10 Oct. 24.

³ Chanel, Inc. v. Italian Activewear of Florida, Inc., 931 F.2d 1472 (11th Cir. 1991).

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well-known beverage and alcohol company got protection for the surface texture of its old parr scotch whiskey bottle from the Ecuadorian Institute of intellectual property.⁴ In India texture marks are not yet common but brands like Asian paints have experimented with unique texture on their product particularly with their textured wall paints however formal registration of texture trademarks is still developing in India.⁵

TASTE:

A taste trademark is when a specific flavour is used on a product to make it unique however the flavour must be part of the product without being its main purpose. One example you can't trademark the taste of Biryani because the taste is the main function of the food.⁶ There are challenges to registering a trademark of taste especially in India one big issue is how to represent the taste graphically as taste can only be described in words which is not accepted for registration. Another problem is that customer can't experience the taste of a product until they buy it making it hard to use taste as a trademark before purchase. Due to these challenges taste trademark is not yet common in India over the rest of the world and no official registration of the taste trademark currently exist anywhere.⁷ These new types of trademarks are changing how we think about the trademarks. As more companies use non-conventional trademarks questions comes up. For example, in India current trademark laws good enough to protect these new types of trademarks? Do these laws help businesses stand out in a unique way?⁸ So we will look at how unconventional trademarks are recognised and registered in India. It will also explore any challenges that come with them. We will compare India's laws to international

⁴ John T. Cross, "Non-Traditional Trademarks: A New Frontier in Intellectual Property Law," Journal of Intellectual Property Law, Vol. 20, No. 1, 2012, p. 1.

⁵ David Vaver, Unconventional and Well-Known Trademarks, Singapore Journal of Legal Studies 1, 1-19 (2005).

⁶ Source https://www.wipo.int/wipo_magazine/en/2009/01/article_0003.html last visited on 10 Oct. 24

⁷ R. K. Singh, "The Protection of Non-Traditional Trademarks in India," Journal of Intellectual Property Rights, Vol. 15, No. 2, 2010, p. 12.

⁸ A. K. Sharma, "The Impact of Non-Traditional Trademarks on Branding," Journal of Marketing Management, Vol. 30, No. 1-2, 2015, p. 25.

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laws to see what worked best lastly it will study how these trademarks affected how companies brand themselves and how consumer view these brands.

IMPORTANCE OF PROTECTING NON-CONVENTIONAL TRADEMARKS:

As we all know the non-conventional trademarks plays an important role and protecting non-conventional trademark like sound, smell, and shapes it's very important for businesses. These unique trademarks help create a brand identity that sets a company apart from its competitor. For instance, when a business uses a specific sound, such as Tom and Jerry Jingle it can evoke strong emotion and create lasting memories for consumers. This connection makes the brand more memorable and helps consumer associate positive feeling with it. Similarly, smells can play a significant role in branding imagine walking into a bakery and being greeted by the warm inviting scent of freshly baked cookies. For example, we take a Tripti bakery they have unique smell or scent. That smell not only enhanced the experience but can also trigger fond memories making customers more likely to return. In addition to creating unique identity nontraditional trademarks contribute to brand recognition and loyalty. Ad consistent sound, smell or shape helps consumers easily identify your brand even in a crowded market. When customers have positive experiences tied to a particular brand unique pharma, they are more likely to become a loyal supporter. Ultimately by protecting these non-conventional trademarks businesses can maintain their competitive edge ensure their brands remains distinctive And Foster lasting connection with their customers. This means they can continue to be distinct and memorable in the eyes of consumer overall safeguarding non-traditional trademarks helps companies build strong connection with their customers making them more likely to return and support the brand.

UNCONVENTIONAL TRADEMARKS IN INDIA:

Section 2[1][ZB] of the trademark act 1999 defines the trademark as a mark capable of being represented graphically and which is capable of distinguish the goods or services of one person

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from those of others and may include shape of goods their packaging and combination of colours and section 2 [1](m)defines a mark as a device brand label name signature word letter numerical shape of words packaging of combination of colours or any combination thereof. unconventional trademark is hence slowly but steadily making their way into Indian jurisprudence⁹. The trademark act 1999 defines a trademark broadly allowing for various forms like shapes former colours sounds to be registered unconventional trademarks are gaining acceptance in law in India. even though they face unique challenges.

A. Sound TradeMarks:

Soundtrack such as Yahoo Yodel¹⁰ and ICIC Bank's jingle¹¹ were granted trademark status in 2008 and 11. Two register sound trademark you must be submitted:

- *An MP3 recording of the sound up to 30 seconds.*
- *A graphical representation of the sound like musical notes.*
- *The key requirement is that the sound must be distinctive Meaning customer must associate it with a particular product or services.*

For a song to be registered as a trademark in India an MP3 recording of the sad jingle chime or musical composition which is not more than 30 seconds in length has to be submitted to the office of Registrar of trademark as per session 20 65 of the trademark rule 2017. Additionally, a graphical representation of its notation also has to be submitted furthermore according to the draught manual of trademarks practise and procedure the application submitted should clearly indicate that the trademark is being sought for a sound ¹². Otherwise, the trademark being sought will be presumed to be for a word and will be examined as such.

B. Colour TradeMark:

⁹ The trademark act 1999.

¹⁰ P. Manoj, Yahoo Awarded India's First Sound Mark; Nokia in Queue, Live Mint, last visited on OCT 12 2024

¹¹ ICICI Secures Rights for Corporate Jingle, The Indian Express, last visited on Oct 12 2024

¹² Britannia Industries Ltd. v. ITC Ltd., 2017 (70) PTC 66 (Del).

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Coloured trademark may be of two types those pertaining to single colour and those pertaining to combination of colours. Combination of colours find mansion in section 2(1) (M), 2 (1)(ZB) and 10 (1)of the trademark act 1999¹³. In furtherance to this session 26 (2) of the trademark rule 2017 stipulates that a reproduction of the trademark should accompany applications seeking trademarks for a combination of colours full stock however single coloured trademark do not find mention anywhere in the act. Additionally, section 9(1) (a) of the act prescribed that the trademark which are not distinguished should not be registered. This limits the scope of trade marketing of colour in India as single colour are easily available and widely used and can be hence, we argued to not be distinctly in nature. Furthermore, the colour depletion theory that is the limited availability of the colours in the world also comes into the picture.¹⁴ It can Therefore be sad that the law on trade marketing of colours in India is ambiguous and that a huge amount of discretion in this regard has been conferred on the judiciary it also be observed that the court themselves have often delivered contradictory or conflicting judgments over the year. Coloured trademark can be: Single colour not explicitly recognised in the law. Combination of colours recognised under diet. Challenges: single colour are often not distinct with enough to be trademark. The colour depletion theory suggests that limited colours make it hard to claim ownership. Court cases have slowly inconsistency scholar Colgate Palmolive Co. Ltd.¹⁵ case upheld colour protection while Cipla Ltd¹⁶ case denied it starting colour cannot be monopolised.

C. Shape TradeMarks:

Shapes of goods can be trademarked if they are fallen distinct bit and can be represented graphically. Not functional meaning the shape should not be necessary for the productive. Shape of goods receives recognition as a trademark under section 2(1)M and 2(1) zb of the

¹³ Ibid20.

¹⁴ Dev Gangjee, Non-Conventional Trade Marks in India, 22 National Law School of India Review 67, 67-96 (2010).

¹⁵ Colgate Palmolive Co. v. Anchor Health and Beauty Care Pvt. Ltd., (2003) DLT 51.

¹⁶ Cipla Ltd. v. MKI Pharmaceuticals, (2007) (36) PTC 166 Del.

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trademark act 1999 just like combination of colours provided the shape is distinctive in nature and can be graphically represented. Shape as a trademark also finds mention in section 9 (3) Of the act wherein it is stipulated that the shape to be trademarked should be distinctive from the goods or services and should hence not to be due to the nature of the product. Indian ports generally sports shape trademarks as seen in Kholan Lily ICOS¹⁷ and Gorbatschow Vodka¹⁸ cases where shapes were recognised as distinct width and granted protection.

D. OTHER UNCONVENTIONAL TRADEMARKS¹⁹:

Other types of unconventional trademark like smell taste and movement marks exist. But are not covered by the Indian trademark laws the requirement of graphical representation poses a challenge for registering. These marks since they cannot easily be visual represented as a result the legal status of these unconventional trademark remains unclear and undeveloped. India's approach to unconventional trademark is evolving but it still has gaps especially regarding colour and other non-visual trademarks. Courts are increasingly recognised sound and shape yet there is still a lack of clarity and consistency in the legal framework.²⁰

EVOLUTION OF NON-CONVENTIONAL TRADEMARKS

Traditional trademarks like logos symbols caption science names and images have been used for a long time to identify products services or brands. However recently there has been a major shift in branding strategies. Companies are now using non-conventional trademark such as colour shape, smell, tastes to differentiate their products in global market.²¹ Discussion about protecting non-conventional trademarks have happened for over 100 years. Even through laws

¹⁷ Lilly ICOS LLC and Anr. v. Maiden Pharmaceuticals Ltd., 2009 (39) PTC 666 (Del).

¹⁸ Gorbatschow Wodka KG v. John Distilleries Ltd., 2011 (47) PTC 100 (Bom). ⁷²MRF Ltd. v. Metro Tyres Ltd., 1990 PTC 101

¹⁹ Neha Mishra, Registration of Non-Traditional Trademarks, 13 Journal of Intellectual Property Rights 43, 43-50 (2008).

²⁰ Neha Mishra, Registration of Non-Traditional Trademarks, 13 Journal of Intellectual Property Rights 43, 43to 50(2008).

²¹ Lindstorm Martin, Brand Sense, Build Powerful Brands Through Touch, Taste, Smell, Sight and Sound, Kogan Page Publisher (2005).

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and processes for registration these trademarks have only recently developed many well-known brands have been using them for more than a decade for example the unique shape of “Coca Cola” bottles the blue gift box from Tiffany and the pink colour trademark of owner Corning Art some of the first non-conventional trademark to be registered. The World Intellectual Property Organisation [WIPO] Set up a committee called the Standing Committee on the law of trademark to study trademarks. This committee analyse non-conventional trademark and divide them into two categories: visual and non-visual marks. Visual trademarks include colour shape holograms while nonvisual trademark include sound smell and texture. In 1956 it was recognised that the existing trademark definition were too broad. This issue was first discussed at meetings in Vienna and the Brussels²². The trips agreement in 1994 marked a significant development in trademark strikes it offered a broad definition of trademarks based on what heard qualify as a trademark and emphasis that a trademark’s unique function is essentially for protection.²³ Article 15 of trips agreement provided a vaguely list of what can be considered a remark including sign logo symbol letter and combinations of colour. According to tribes’ unconventional trademark should be received protection since they helped identify specific products.²⁴ Since the 19th century there has been much scholarly work and debate in Europe about protecting non-conventional trademarks in the early 20th century there was Ivona discussion in Bolivia about protecting marks like sours and shapes because they could be represented visually and had distinct features. There has been ongoing discussion about the registering and protecting non-conventional trademark over the past 20 years challenging remain. This is especially true for non-visual trademarks like smell touch taste which can confuse customers and are difficult to represent graphically.

²² Tanisha Ranjan, India: Protection of Non-Conventional Trademarks, Fast forward Justice’s Law Journal , <https://fastforwardjustice.com/india-protection-of-non-conventional-trademarks/> last visiten on 10 Oct. 24.

²³ Kenneth L Port, On Non-Traditional Trademarks, William Mitchell College of Law Legal Studies Research Paper Series , <https://ssrn.com/abstract=1564230>. Last visited on 11 oct 2024.

²⁴ Nathan K G Lau, Registration of Olfactory Marks as Trademarks: Insurmountable Problems?, 16 Singapore Academy Law Journal 264, 265 (2004).

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1.2 LEGAL FRAMEWORK FOR NON-TRADITIONAL TRADEMARKS

A non-traditional trademark refers to marks that go beyond the usual logos, names, or symbols typically used to identify a brand. These trademarks can include sounds, smells, colors, shapes, holograms, or even gestures that distinguish one company's products or services from another. The legal framework for non-traditional trademarks varies across countries. In most cases, these marks must still meet the basic requirements of being distinctive, meaning they can clearly differentiate the brand from competitors. Many countries have updated their trademark laws to include these non-traditional marks, but registration can be more challenging because proving their distinctiveness may require more evidence than traditional marks. For example, in India, under the Trademarks Act, 1999, non-traditional marks like colors or sounds can be protected, but applicants need to show that the mark has gained recognition in the market. Similarly, the European Union allows non-traditional marks like shapes or sounds under the EU Trademark Regulation, but they must be distinctive and not simply serve a functional purpose. The legal framework is evolving to accommodate these unique identifiers, ensuring brands can protect their distinctiveness in a broader range of ways.

PROVISION UNDER TRADEMARK AT 1999:

The trademark at 1999 is the primary legislation governing trademark in India the Act defines a trademark as a mark used or proposed to use in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services and some person having the right as proprietor to use the mark .²⁵ The law allows businesses to register non-traditional trademarks which include things like sound mark, smell mark, shape marks. This means that companies can protect unique sounds, and shapes²⁶ that represent their brand however there are specific rules that must be followed for these

²⁵ The Trade Marks Act, 1999, Section 2(1)(a).

²⁶ The Trade Marks Act, 1999, Section 2(1)(b).

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trademarks to be registered now one important condition is that the trademark needs to be distinctive this means it should be unique enough to set the brand apart from its others. For example, per sound or smell that is commonly used by many businesses might not qualify because it doesn't help identify a specific brand. Another requirement is that the trademark cannot be descriptive of the goods or services this means it shouldn't simply describe what the product is phone instance if pregnancy is called fresh rain, it may not qualify because the name directly described the scent. So, while the law sports the registration of non-traditional trademarks it also ensures that these marks are unique and not just descriptive and also helping to maintain clear brand identities in the marketplace.²⁷

TRADEMARK RULES OF 2017:

Several notable reforms have been introduced in the Trademark Act, particularly through the trademark's rules of 2017, reflecting a positive evolution in trademark registration process:

SOUND MARK SUBMISSION:

The trademark rules of 2017 marked a significant advancement by allowing the submission of sound marks in a MP3 format. Rule 26 (5) specifically outlines the format and duration for sound mark required a 30-second length this provision acknowledged the growing importance of non-traditional trademarks, such as sound in the realm of trademark recognition.²⁸

REGISTRATION OF COLOUR MARKS:

Rule 26(2) of the Trademarks Rules, 2017 facilitated the registration of colour marks. However, it's noteworthy that this provision is limited to a combination of colors. This acknowledgment of colour combinations as distinctive elements demonstrates an understanding of the diverse ways in which trademarks can be visually represented.²⁹

²⁷ The Trademarks Act, 1999, Section 9.

²⁸ <https://www.mondaq.com/india/trademark/1412620/unconventional-trade-mark-comprehensive-view> visited on 18 Oct 2024

²⁹ *Ibid*

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Graphical Representation of Trademarks: Rule 2(1)(k) of the Trademarks Rules, 2017 emphasized the graphical representation of trademarks. According to this rule, a trademark can be represented graphically through a set of pictures, continuous snapshots of a moving mark, and accompanying descriptions. This provision underscores the importance of clarity and precision in the visual representation of trademarks, especially in cases involving dynamic or evolving marks.³⁰ These reforms collectively reflect an effort to modernize the trademark registration process, accommodating non-traditional marks, and providing clear guidelines for graphical representation. They signify a recognition of the evolving nature of trademarks in a contemporary and dynamic business environment.

JUDICIAL INTERPRETATIONS:

COLOURED TRADEMARK:

Colgate Palmolive po anchor health and beauty care Pvt Ltd 2003³¹: in this case the high court stopped the defendant from using the red and white colour combination that Colgate used for its products packing. The court blamed that copying another company's color could confuse customers and was considered passing out which means pretending to be another brand. However, four years later in the case of ***Cipla limited verses mki pharmaceuticals***³², the situation was different simpler tries to stop MKI from using iron orange colour similar to its own for their product. This time the court decided that no one could claim ownership over a colour they rolled down just copying a little company's colour did not count as passing off. So, in these two cases show different views on the use of colour branding the first case quoted protection against colour copying while the 2nd case stated that coloured themselves cannot be monopolized by a single brand. The Delhi High Court later reinforced its earlier decision on the Colgate Palmolive case in several other cases including ***India limited verses Sri Bagdiya***

³⁰ *id*

³¹ Colgate Palmolive Co. v. Anchor Health and Beauty Care Pvt. Ltd., (2003) DLT 51

³² Cipla Ltd. v. MKI Pharmaceuticals, (2007) (36) PTC 166 Del

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Nath Ayurveda Bhavana Private Limited and Seven Towns Limited verses Kiddiland³³.

Similar ruling was also made in the case of deer and co. verses S. Harcharan Singh. So, in the case Wilt onia and dust is limited versus ITC limited the court had a different view. ITC claimed that Britannia copied its yellow and blue colour combination of its nutrient choice biscuit the code decided that it could not stop Britannia from using those colours because it had not shown that this color combination had become or recognizable symbol of its brand.

SHAPE TRADEMARK

Lily ICOS LLC vs Maiden Pharmaceutical Limited³⁴, A In this case the Delhi High Court ruled in Favor of Lily stating that the Almond Shape of their product had been copied. The court issued an injunction against Maiden Believing that they adopted this shape with the intent to deceive customers. Same in the case of ***Gorbatshev Vodka kg vs John Distilleries Limited***³⁵ the Mumbai High Court recognized the shape of Gorbatschows Vodka bottles as a trademark the court granted an injection against John Distillery because it agreed that the bottle shape was distinctive and contributed to the brand reputation. Even before the current trademark law Indian codes acknowledged shape as varied trademark. In ***MRF Limited vs Metro Tires Ltd in 1990*** MRF sought to stop Metro Form making tires with similar trade patterns. The Delhi High Court favored MRF noting that a similar pattern could confuse customers about the product's origin. A similar decision was made in ***Zipo manufacturing company versus Anil Mulchindani in 2011***³⁶ further putting the idea that shapes can be protected as trademark.

1.3 INTERNATIONAL TREATIES:

India is part of several important international treaties that helps protect trademarks there are mainly two key agreements or the Paris Convention and the Trips Agreement.

³³ Seven Towns Ltd. and Ors. v Kiddiland and Ors., (2016) (68) PTC 308 (Del)

³⁴ Lilly ICOS LLC and Anr. v. Maiden Pharmaceuticals Ltd., 2009 (39) PTC 666 (Del).

³⁵ Gorbatschow Wodka KG v. John Distilleries Ltd., 2011 (47) PTC 100 (Bom). ⁷²MRF Ltd. v. Metro Tyres Ltd., 1990 PTC 101.

³⁶ Zippo Manufacturing Company v. Anil Moolchandani and Ors., 2011 (48) PTC 390 (Del).

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PARIS CONVENTION:

The Paris convention focuses on protecting industrial property which includes trademarks it established basic role that country should follow to ensure that trademark is respected and protected. This means that if a brand is registered in one country other member countries should recognize that registration and offer protection against unauthorized use. This helps business is feel more secure when they expand into other countries. Trips agreement: the trip's agreement [trade related aspect of intellectual property rights] is part of the wto world trade organization framework it sets minimum standards for intellectual property protection including trademarks and unconventional trademarks. Under trips member countries are required to provide effective protection for all types of trademarks including nontraditional trademarks once like sound and smell this agreement helps ensure that trademarks are enforced properly and that businesses can take action against infringement.

[WIPO] WORLD INTELLECTUAL PROPERTY ORGANIZATION:

The word intellectual property organization also plays a significant role or important role in trademark protection Wipro has created guidelines specifically for nontraditional trademarks such as sound mark like jingles and smell marks like Distinctive scent. These guidelines help countries understand how to register and protect these unique trademarks providing a framework for businesses to safeguard their brand identities. So international treaties like the Paris Convention and the trip segment helps to protect trademark globally ensuring that businesses can defend their brand in multiple countries. WIPOS Guidelines further sports the protection of nontraditional trademarks helping to promote innovation and creativity and branding this framework is essential for businesses as it allows them to build and maintain strong brand identity worldwide.

1.4 COMPARATIVE ANALYSIS BETWEEN INDIAN AND GLOBAL BEST PRACTICES:

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NON TRADITIONAL TRADEMARK LAWS IN THE UNITED

STATES:

The United States there is a strong legal system for protecting nontraditional trademarks which includes sounds, smell and shapes. The main law that governed stair mark is called Lanham Act Which was established in 1946. ³⁷The Lanham Act allows businesses to register nontraditional trademarks such as a catchy jingle or unique scent.³⁸ However to get these trademarks registered They must meet specific requirements the trademark must be Distinctive meaning it should be unique enough to identify a particular brand. Additionally, it shouldn't not simply describe the products or services let us take an example scent that smells like common product might not qualify.

EUROPE UNION APPROACH:

The Europe Union has unified system for trademark protection included nontraditional trademarks. The primary law in the area is the Europe Union trademark regulation which was put into effect in 2017.³⁹ Like the Lalam Act the U trademark regulation allows for the registration of nontraditional tear marks including sounds and smells. It also requires that these trademarks be distinctive and not just descriptive of the products or services they represent this means that a trademark must be original enough to stand out and not simply describe what the product is.

TRADEMARK LAW IN JAPAN:

Japan has its own system for protecting trademarks including nontraditional ones the main law is called trademark act which was established in 1959 the trademark act allows for the registration of nontraditional trademark such as sound and smell mark.⁴⁰ Similar to the rules in

³⁷ The Lanham Act, 1946, 15 U.S.C. § 1051 et seq.

³⁸ World Intellectual Property Organization. (2019). Guidelines for the Protection of Non-Traditional Trademarks.

³⁹ EU Trademark Regulation, 2017, (EU) 2017/1001

⁴⁰ Trademark Act, 1959, Law No. 127 of 1959 (Japan)

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the US and the EU the Japanese law required that these trademark be distinctive and not descriptive this means that a trademark must be unique enough to identify a specific brand and cannot just describe the product. So we can say that while the United States, the Europe Union and Japan all recognize the importance of unconventional or nontraditional trademark they have similar requirements for registration each legal framework emphasis that these trademark must be distinctive and not merely descriptive of the goods or the services they represent this ensures that businesses can effectively protect their unique brand identities in the marketplace.

1.5. IMPACT OF NON-TRADITIONAL TRADEMARKS ON BRANDING:

CONSUMER PERCEPTION AND BEHAVIOR:

Nontraditional trademarks like sound marks, smell, and shape marks can greatly influence how consumers see and interact with brands so by all these we can say that these unique trademarks help create a strong brand identity and can affect buying choice. For example, a study by Singh in 2017 found that brands using nontraditional trademarks can boost brand recognition and loyalty by as much as 20%. This means more people remember the brand and are likely to stick with it. ⁴¹There is another study by Kumar in 2019 ⁴²showed that nontraditional trademarks can create a positive emotional connection with consumers. This connection leads to greater loyalty whether customers not only by the products but also recommend it to others.

MARKETING STRATEGIES INVOLVING NONTRADITIONAL TRADEMARKS:

⁴¹ Singh, R. K. (2017). The Impact of Non-Traditional Trademarks on Consumer Perception and Behavior. Journal of Marketing Management, 32(1-2), 1-15.

⁴² Kumar, S. (2019). The Role of Non-Traditional Trademarks in Branding and Marketing Strategies. Journal of Brand Management, 26(1), 1-12.

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A Businesses can use nontraditional trademarks in various marketing strategies to stand out and create a unique brand image so here are some common ways to do this:

Sound branding: companies use catchy jingles or sounds to make their brand memorable. A specific sound can evoke emotions making people feel good about the brands. For example, there is a sound mark of a gem's candy. Scent branding: Brands use unique scents to create a distinct identity for example a store might use a specific smile to make customer feel welcome and happy and it shows the uniqueness of their brand.

Shape branding: companies design their products in unique shapes to differentiate themselves from a competitor and it plays a vertical role to showing them the unique and identifiable in the competitors or we can say in the world. So, a distinctive shape can make product easily recognizable. So, by all of these we can say that how these trademarks can foster positive emotional connection with consumers leading to increased loyalty and adverse kc for the brand. Nontraditional trademarks play a white role in how consumer presume brands and influence their buying behaviour. They help create strong emotional ties between consumers and brands making it easier for businesses to stand out in a crowded market by using sound smell and shape in their branding companies can enhance their identities improving reorganization building lasting customer royalty.

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