

# Trademark Infringement in Bangladesh: A Legal and Practical Perspective

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## ABSTRACT

Trademark is one kind of intellectual property; It is a private right. Infringement is an unauthorized use of a registered trademark. Without the consent or authorization of the owner if any one uses the registered mark commits infringement. Further use of a similar mark to the registered mark does also constitute infringement of the registered mark. In our Bangladesh infringement of trademark is a very common phenomenon. But due to lack of proper enforcement of trademark law this infringement is increasing in an alarming rate. Eradication of trademark infringement is now one of the major challenges for our govt. Due to administrative inefficiency, lack of awareness of the people and very old rules (Trademark Rules, 1963), it is tough to implement the present law (Trademarks Act, 2009) and to ensure exclusive protection to the trade mark proprietors. By removing the present problems, we can ensure our trademark system immune from any sorts of possible infringement and can make our trademark protection system better.

**Keywords:** Trademark Infringement, Intellectual Property Law, Legal Framework, Brand Protection, Intellectual Property Rights (IPR), Judicial Remedies

## INTRODUCTION

A trademark is any sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors. Trademark infringement is the use by another of the same or a similar mark that violates the prior trademark rights of another in the jurisdiction where such use occurs.

Infringement is an unauthorized use of a registered trademark. Without the consent or authorization of the owner if any one uses the registered mark commits infringement. A successful infringement action leads to prohibition of the use of the confusingly similar mark.

In our country we see the frequent infringement of trademark and not it is increasing in an alarming rate. Though there is a trademark act 2009 in our country but its not prove effective to prevent the trademark infringement. Lack of strong mechanism in law this infringement is increasing day by day. Our trademark law yet not maintain the international protection standard against infringement. Still damages are difficult to prove in trademark infringement cases in practice.

So the prevention and eradication of trademark infringement is a major challenge for our govt. Time-befitting steps are urgent need in this regard. The govt. has to put optimum effort to protect the trademarks from all sorts of infringement.

## Objectives

The central focus of the study is to discover the real scenario of huge infringement of trademark in Bangladesh and to find out the ways of prevention of that serious frequent infringement. However, the followings are the other major objectives of this study:

1. To find out the causes of trademark infringement in Bangladesh
2. To identify different problems regarding protection of trademark

3. To exam the application and scope of trademark law to protect infringement
4. To find out the ways of prevention of infringement of trademark
5. To focus the ways of development of existing trademark protection mechanism
6. To find out the possible steps to meet the infringement prevention challenge.

## METHODOLOGY

During my proposed research topics work I will follow both qualitative and quantitative method. Blending of Qualitative and Quantitative method will be proved very helpful to get a fruitful output from the research.

So in my study I also apply these two methods. Through analytical method I try to find out the ways of prevention of infringement of trademarks. I also follow deep observation method to discover the real scenario of infringement of trademark in Bangladesh.

Beside this I also try to follow the statistical method to assess the rate of infringement of trademark in our country.

### Conceptual Framework

This framework outlines the key legal, institutional, and practical components that define and influence trademark infringement in Bangladesh. It integrates the theoretical foundations, legal instruments, and enforcement mechanisms, along with the practical realities faced by stakeholders in protecting trademark rights.

### Meaning Of Trademark

Trademark is a symbol or sign which indicates the source of goods; it distinguishes the goods or services of one entrepreneur from another. It is a visual symbol in the form of a word, a device or a label applied to articles of commerce with a view to indicate to the purchasing public that they are the goods manufactured or otherwise dealt in by a particular person as distinguished from similar goods manufactured or dealt in by other persons.

According to Black's *Law Dictionary*,

Trademark means a distinctive mark, motto, device, or emblem, which a manufacturer stamps, prints, or otherwise affixes to the goods he produces, so that they may be identified in the market, and their origin be vouched for.

According to Oxford *dictionary*,

Trademark means a symbol, word, or words legally registered or established by use as representing a company or product.

Under *the Trade Mark Act, 2009*, "Trademark" means a registered trade mark or a mark used in relation to goods or service or a mark used or proposed to be used in relation to any service or goods indicating a connection in the course of trade between the goods and the person having the right, either as proprietor or as registered user, to use the mark

A trademark is any "thing" that helps a consumer distinguish between one company's products and another company's products. The "thing" may be a word or other device such as a phrase, logo, sound, or package design; as long as it is used as a way of identifying for the consumer that one brand is different from another. It is not necessary that the consumer be able to identify the specific manufacturer. Rather, the mark need merely to communicate to consumers that the goods or services bearing the mark come from a unique source, distinguishable from all the other sources for those goods or services.

## Salient Features of Trademark

If we analyze the definition of trademark which is given under the trademarks Act 1999 some features of trademark are pointed out, these are:

1. Trade mark must be a mark which includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof.
2. The mark must be capable of being represented graphically.
3. It must be capable of distinguishing the goods or services of one person from those of others
4. It may include shape of goods, their packaging and combination of colours.
5. It must be used or proposed to be used in relation to goods and service
6. The use must be for the purpose of indicating a connection in the course of trade between the goods or service and some person having their right as proprietor to use the mark

## Functions of Trademark

A trademark performs basically following four functions-

### ➤ Distinguish one's goods from those of another

Allow consumers to distinguish my goods from another's by affixing a trademark to the goods.

### ➤ Indicate the origin

Inform consumers that products with the same trademark originate from the same source.

### ➤ Guarantee quality

Guarantee consumers that all products with the same trademark have the same quality.

### ➤ Advertising

Remind consumers of the goods associated with a trademark as a promotional method in commercial transactions.

It also creates an image for the product in the minds of the public, particularly consumers of such goods.

## Classification and Requirement for Good Trademarks

### Classification of Trademark

Trademark can be classified on various categories according to their nature and variety of quality. Basically followings are the notable types of trademarks:

#### Collective trademark

A collective trademark, collective trade mark, or collective mark is a trademark owned by an organization such as an association, used by its members to identify themselves with a level of quality or accuracy, geographical origin, or other characteristics set by the organization.

“Collective mark” means any visible sign designated as such in the application for registration, which—

(a) is capable of distinguishing the origin or any other common characteristic, including the quality, of goods or services of different enterprises; b) is used by different enterprises under the control of the registered owner of the collective mark; and (c) is used in respect of goods or services by a group of individuals collectively engaged in the same business as one legal entity.

### **Certification trademarks:**

A certification mark is a sign certifying that the goods or services in respect of which it is used are of a particular origin, material, mode of manufacture, quality, accuracy, performance, or other characteristic.

“Certification trademark” means a mark adapted in relation to any goods or services which distinguishes, in the course of trade, the goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic from the goods not so certified and which is capable of being registered

A collective mark may be owned by an association which itself does not use the collective mark but whose members may use the collective mark; the members may use the collective mark if they comply with the requirements fixed in the regulations concerning the use of the collective mark. An enterprise entitled to use the collective mark may in addition also use its own trademark.

### **Service Marks**

“Services” means services rendered for money or money’s worth in the course of trade or business, but does not include goods. A "service mark" refers to a mark used by the owner of a service business (advertisement, communication, banking, transportation, restaurant, etc.) to distinguish his/her service business from that of others.

### **Characteristics of Good Trademarks:**

1. It must be easy to pronounce and remember, if the mark is a word;
2. It must be easy to spell correctly and write legibly;
3. It should not be descriptive but may be suggestive of the quality of the goods;
4. It should be short;
5. It should appeal to the eye as well as to the ear;
6. It should satisfy the requirements of registration;
7. It should not belong to the class of marks prohibited for registration.

### **Trademark Infringement**

Trademark Infringement means using a registered trademark without the consent of its registered proprietor. It is a violation of the exclusive rights attached to a trademark without the authorization of the trademark owner or any licensees provided that such authorization was within the scope of the license.

Section 26(1) of the Trademark Act, 2009 defines infringement as “if a person, not being registered proprietor or user, uses any distinctive or deceptively similar trademark in relation to goods or service in his own trade, it will be considered that he has infringed a registered trademark.

Trademark infringement is the use by another of the same or a similar mark that violates the prior trademark rights of another in the jurisdiction where such use occurs. The legal definition of infringement varies from one jurisdiction to another.

The most common standards for infringement are: (a) close similarity of a mark and its associated goods and/or services to a prior mark and its associated goods and/or services; or (b) use of a mark that creates a likelihood of confusion with a prior mark among the relevant consumers. Trademark law in some jurisdictions incorporates both concepts.

### **Circumstances of Trademark Infringement**

As per section 26 of the Trademark Act, 2009 following are the circumstances under which a person is deemed to have infringed a registered trademark:

1. Where a person uses a trademark which is identical or similar to the registered trademark used in the course of trade for the similar goods or services not being a „registered proprietor or permitted user and cause confusion on the part of the public. For example, an application to register “Gluvita” as a trademark for biscuit was refused, because similar trademark “Glucovita” is being used for glucose powder by another registered use.
2. Where the registered trade mark is used in the course of trade for the goods or services which are not similar, but has reputation in Bangladesh and the use of the mark by the person without due cause, takes unfair advantage of or is detrimental to the distinctive character or repute of the registered trade mark.
3. Where a person who is not being duly authorized by the registered proprietor or a registered user uses the trade mark on a material intended to be used, for labeling or package in goods, as business papers or for advertising goods or services.
4. Where a person not being a registered proprietor or permitted user uses a registered well-known trademark for the identical or similar goods or services for which the mark has been registered.
5. Where a person not being a registered proprietor or permitted user uses a registered well-known trademark for the goods or services not being identical with or similar to those in respect of which the mark has been registered, by using of the mark in relation to those goods or services, would indicate a connection between those goods or services and the owner of the registered well-known mark and that the interests of the owner of the registered well -known mark are likely to be damaged by such use.

## Essential Elements and Burden of Proof of Infringement

### Essential Element of Trademark Infringement

1. The taking of any essential feature of the mark or taking the whole of the mark and then making a few additions and alterations would constitute infringement.
2. The infringing mark must be used in the course of trade
3. The use of the infringing mark must be printed or usual representation of the mark in advertisements, invoices or bills. Any oral use of the trademark is not infringement.

### Burden of Proof of Infringement

It is well-settled that the plaintiff must prove that the essential features of his registered mark have been copied. The onus to prove deception is on the part of the plaintiff who alleges infringement. A mark is said to be infringed by another trader if even without using the whole of it, the latter uses ne or more of its essential features. The identification of an essential feature depends partly on the courts own judgement and partly on the burden of the evidence that is placed before it.

### Remedies Against Trademark Infringement

The Trademarks Act states that infringement suits must be instituted before the appropriate District Court having jurisdiction. In the case of infringement suits, the trademark must be registered in Bangladesh as per Section 24(1) of the Act. The Act also provides for actions for unregistered trademarks. The period of limitation for filing a suit for infringement of a trade mark is three years from the date of infringement. The relief which a court may grant in any suit for infringement and passing off is:

1. An injunction restraining further use of the infringing mark, and
2. Damages or an account of profits, and
3. An order for delivery of infringing labels and marks for destruction or erasure.

Although civil remedies are available for both registered and unregistered trademarks, it can be extremely difficult to prove misuse and obtain relief for unregistered trademarks. However, the following are criminal offences punishable under the Act, 2009:

1. Applying a false trademark so as to mislead consumers about the origin of the goods;

2. Counterfeiting a trademark without assent of the proprietor of the trademark;
3. Making or possessing any instrument for the purposing of counterfeiting a trademark;
4. Applying any false trade description to goods or services;
5. Applying false indication of country to goods or services as regards the place of production or manufacture of them; And
6. Selling, or exposing or possessing for sale or any purpose of trade or manufacture any goods bearing a false trade mark or description.

The punishment for above-mentioned offences is imprisonment for up to two years but not less than six months or a fine up to Taka 2,00,000 but not less than Tk 50,000, or both and for a second or subsequent conviction, imprisonment up to three years but not less than one year or fine up to Taka 3,00,000 but not less than Tk 1,00,000, or both. The courts also have the power to set the prison term and the amount of any fine. All the above mentioned offences shall be trial by the Metropolitan Magistrate or Magistrate of the first class.

## **Trademark Piracy And Counterfeiting**

### **Trademark Piracy**

Trademark piracy means the registration or use of a generally well-known foreign trademark that is not registered in the country or is invalid as a result of non-use.

The Paris Convention provides in its Article 6bis that a well-known trademark must be protected even if it is not registered in the country. Article 6bis is restricted to identical and similar goods, however. Often well-known trademarks are used by pirates on totally different goods, or for services. Furthermore, courts sometimes require a trademark to be well-known in the country where piracy is discovered, and deny protection, even if the true owner of the trademark can prove that it is internationally well-known in a considerable number of other countries. Improved protection against trademark piracy is therefore needed. The Joint Recommendation Concerning Provisions of the Protection of Well-Known Marks which was adopted by the WIPO General Assembly and the Assembly of the Paris Union in September 1999 provides some guidance in this respect.

### **Counterfeiting**

The term “counterfeiting” is commonly used to refer to a broad range of intellectual property (IP) rights infringements, including both trademark and copyright infringements. Technically, “counterfeiting” refers only to cases of trademark infringement, whereas “pirating” refers to copyright infringement. Often, different types of IP rights infringements overlap. For example, music piracy infringes copyright as well as trademark protection. Fake toys are often sold under a different name but infringe the design protection of the toy.

Counterfeiting is first of all the limitation of a product. The counterfeit is not only identical in the generic sense of the term. It also gives the impression of being the genuine product (for instance a LOUIS VUITTON bag), originating from the genuine manufacturer or trader.

The offering of such a counterfeit product is only meaningful, of course, if the genuine product is known to the consumer. Consequently, counterfeit goods often belong to the category of luxury goods and bear a well-known trademark. In fact, however, this is only a coincidence: counterfeit goods can just as well be mass-consumption goods, or goods not sold under a trademark but protected by other intellectual property rights such as copyright or design protection. They can also be known to a small group of specialized consumers only, such as brakes to be used for cars, or aircraft, or pesticides known to clients in agriculture. These examples show at the same time how dangerous the use of counterfeit goods can be - a whole year's crop in a large part of Africa was once destroyed by the use of a counterfeit pesticide.

Some very typical and widely-known examples of counterfeit goods, have been, for example, the false LOUIS VUITTON bags, the false ROLEX, CARTIER and other luxury watches, the false PUMA and REEBOK sports shoes, the false LACOSTE sports shirts and so on. Worldwide sales of some counterfeit

products may exceed those of the genuine products. This shows that counterfeiting is an economic phenomenon of worldwide importance, which can represent an alarming percentage of world trade. Indeed, it is important to recognize that counterfeiting is an economic crime, comparable to theft. Counterfeiters not only deceive the consumer but also damage the reputation of the genuine manufacturer, apart from which they do not pay taxes and other duties to the State.

### **Legal Protection Against Counterfeiting**

Although it is not a condition and not always the case, counterfeit goods generally bear a trademark. This has the advantage of making counterfeiting actionable as trademark infringement, which is generally easier than fighting against infringement of other intellectual property rights, which may also be involved. However, since counterfeiting is an economically serious and important problem, the remedies specified in trademark laws are often not sufficient to serve as an effective deterrent. This is a problem that concerns three areas of law enforcement, all of which are essential if counterfeiting is to be successfully combated.

Laws must provide for severe criminal sanctions, including imprisonment. Most trademark laws provide for criminal sanctions for trademark infringement, but they were often enacted long ago and are no longer realistic. Counterfeiters pay fines, and imprisonment is rarely ordered.

Rapid, far-reaching remedies are necessary. Counterfeiters do not operate from a normal business address, and in the event of prosecution are difficult to trace. Often they can only be found after a long and thorough investigation.

### **Barriers To Implement Trademark Laws In Bangladesh**

At present the use of illegal Trademark is a common matter in Bangladesh. In this regard the proprietor have to face huge difficulties, because as a manufacturer he produce his goods with his intellectuals and hard labor but other people violates his rights without his permission and reproduce same goods and become benefited. For this reason it is necessary to implement Trademark Law. But in Bangladesh a lot of difficulties here. These are-

#### **Ignorance of Law**

Ignorance of Law is a common problem in the context of our country. Though it is not a countable excuse in the eye of Law. But it is very much true that general people are ignorance of Law. So ignorance of Law is one of the most important barriers to implement any kind of Law.

#### **Lack of Education**

Lack of education is another barrier to implement Trademark Law in Bangladesh. The rural areas some businessman use confiding mark like as "Rata", "Bada". This kind of people have no idea about Trademark related existing Laws.

#### **Absence of Proper Execution of Law**

At present Trademark related Laws are existing in Bangladesh but in true sense proper execution of those Laws is not up to the desired level.

#### **Lack of Public awareness**

In most of the cases, general people are not aware about their rights. As a result, they cannot give importance to protect their rights.

#### **Disinterestedness of Proprietor**

For the reason of complexity in legal steps proprietors are not interested to take any kind of legal procedure.

## **Poverty**

For the purpose of removing poverty general people starts any kind of business without knowing business Law or business related Laws and business procedures. So poverty is one of the most important barriers for the implementation of Trademark Law.

## **Weakness of Law enforcing Agency**

In our country, the Law enforcing agencies cannot perform their duties 100 %. It is one of the weak points of them.

## **Insufficient Law**

Trademark related Laws in our country is insufficient. It is very difficult to ensure proper implementation of Trademark Law when regarding Laws are insufficient.

## **Limited Risk**

For the reason of insufficient Law to use of unregistered trademark, confusing trademark there has a limited risk. So trademark infringement is a easy matter.

## **Complexity in Legal Step**

Complexity in legal step also create obstacle to implement Trademark Law in Bangladesh.

## **Use of Unregistered Trademark**

In case of unregistered Trademark proprietors cannot use it properly and lawfully to protect the right of good will.

## **Passing off**

Generally passing off means a false representation of goods which creates confusion in customers mind. Though by passing off customers are cheated or there have a possibility of cheating, so plaintiff must be get remedy. In this case plaintiff must be prove the loss of business. It is the main condition for passing off suit. But most of the cases, plaintiff fails to prove loss of business for insufficient Law and complicity in legal Step.

## **Negligence of Government**

Bangladesh government has not taken proper and effective procedure to prevent Trademark infringement. For this reason implementation of Trademark Law is obstructed.

## **Non Co-Operation of Mass Media**

In our country Mass Media can be played a great role to influence the enforcement and implementation of Law. But they have not taken enough, necessary steps for this purpose.

## **Defective Education System**

People do not know about proper and effective Laws in case of several sectors. Defective education system is liable for these. Law is not including in the syllabus of Secondary and Higher Secondary education. So people have not enough knowledge about the importance of implementation of Laws.

## **Following Western Culture**

For speedy change of life style Bangladesh follows Western Culture and Western Laws which are not exhaustive in the circumstances of Bangladesh.

## **Lack of Job Opportunity**

Lack of job opportunity is one of the most important social problems in our country. For removing poverty people engage themselves any kind of business without enough knowledge of Laws.

## **Huge Monetary gain**

For the purpose of huge monetary gain some kinds of businessman infringe the Trademarks Law. They cannot understand the implementation of Trademark Law.

## **Rapidly changing Patterns in Modern Living**

Our society changes every moment for the reason of industrialization and Urbanization. It creates difficulties to implement any Kind of Law.

## **Negligence of Trademark Office**

Sometimes Trademark office cannot perform their duties properly. For this reason implementation of Trademark Law is obstructed.

These are some important barriers to implement Trademark Law in Bangladesh. Not at all there have some defects in registration procedure of Trademark and the procedure is lengthy process.

## **Protection of Trademark And International Instrument**

### **Conditions of Trademark Registration**

In order to get trademark registration, a mark must be inherently distinctive or distinctive through use. An arbitrary marks (apple for computer), fanciful mark (KODAK) or suggestive mark (FRIDGEDAIRE as applied to refrigerators) etc are treated as distinctive mark. Actually any sign capable of distinguishing the goods or services of one undertaking from those of other undertakings (thus including service marks) shall be eligible for getting registered as a trademark. (TRIPS Agreement, Art. 15.1). In Bangladesh the basic requirements of a mark to be registered are maintained with the compliance of International Treaties like Paris convention or TRIPS Agreement. Besides, the following mark or part of mark shall not be registered as a trademark) which comprises or consists of any scandalous or obscene matter;

ii) The use of which would be contrary to any law for the time being enforce;

iii) The use of which would be likely to deceive or cause confusion; or

iv) which contains any matter likely to hurt the religious susceptibilities of any classes of the citizen of Bangladesh;

v) which is identical with, or is an imitation of, or contains as an element, an armorial bearing, flag or other emblem, a name or abbreviation or initials of the name of, or official sign or hallmarked adopted by, any state or international organization created by an international convention, charter or other instruments (the 2009 Act, section 8).

No trademark shall be registered in respect of any goods or services if it is identical with or confusingly similar to, or constitutes a translation or a mark trade description which is well-known in Bangladesh (for example TATA mark well-known in Bangladesh) for identical or similar goods or services of another enterprise (the Act, 2009, section 10(4)).

## Criteria Of Protect Ability

As we have previously known that a sign in order to be capable of serving as a trademark must fulfill some requirements. Throughout the world criteria of protect ability of trademark is based generally on three principles such as:

1. A trademark must be distinctive or capable of distinguishing different product.
2. It has no misleading character.
3. It has not violated public order or morality ,

## Requirement Of Distinctiveness:

This requirement follows from the main function of a trademark namely; to distinguish the products or services of one enterprise from the products or services of other enterprises. In order to be capable of distinguishing, a trade mark must be easily recognizable as a sign which is different from product itself and also different from the name of the product. Thus the picture of a coffee bean or the word "coffee" are not suitable to serve as a trademark for coffee, since a trademark should not convey the idea of the kind of product but should distinguish a particular product from products of the same kind.

The requirement of distinctiveness is roughly analogous to the requirement of novelty for patent rights and to the requirement of originality for copyright. Without distinctiveness either based on the inherent nature of mark or developed by the owner through marketing, trade mark rights fail.

The most distinctive marks, of course, are coined or fanciful ones. Distinctive and original devices, it has been held, not only serve to identify very effectively the origin of goods but they also assist in calling attention to the goods, they serve, in a sense, a marketing function on their own. Non distinctive marks are not available for appropriation by an owner, at least, not until, they become distinctive.

The distinctiveness requirement has two themes. Firstly It allows a first user to object to a later user on the basis that the later user's mark is not distinctive if it too closely resembles that of the first user.

**Secondly:** - it is a policy opposing the domination of the common or descriptive terms of the market place, similar to the policy against ownership of trademarks in gross. A mark must be distinctive to prevent the pre-emption of these terms which all competitors need to identify their goods.

## Fanciful Marks

A fanciful / inherently distinctive trademark is prima facie registrable, and comprises an entirely invented or "fanciful" sign. For example, "Kodak" had no meaning before it was adopted and used as a trademark in relation to goods, whether photographic goods or otherwise. Invented marks are neologisms which will not previously have been found in any dictionary.

## Arbitrary Marks

An arbitrary trademark is usually a common word which is used in a meaningless context (e.g. "Apple" for computers). Such marks consist of words or images which have some dictionary meaning before being adopted as trademarks, but which are used in connection with products or services unrelated to that dictionary meaning. Arbitrary marks are also immediately eligible for registration. Salty would be an arbitrary mark if it used in connection with telephones, e.g. Salty Telephones, as the term "salt" has no particular connection with such products.

## **Suggestive Marks**

A suggestive trademark tends to indicate the nature, quality, or a characteristic of the products or services in relation to which it is used, but does not describe this characteristic, and requires imagination on the part of the consumer to identify the characteristic. Suggestive marks invoke the consumer's perceptive imagination. An example of a suggestive mark is Blu-ray, a new technology of high-capacity data storage.

## **Generic Marks**

A generic term is the common name for the products or services in connection with which it is used, such as "salt" when used in connection with sodium chloride. A generic term is not capable of serving the essential trademark function of distinguishing the products or services of a business from the products or services of other businesses, and therefore cannot be afforded any legal protection. This is because there has to be some term which may generally be used by anyone—including other manufactures—to refer to a product without using some organization's proprietary trademarks which become generic after losing distinctive character are known as generalized trademarks.

## **Requirement Of Absence Of Violation Of Public Order Or Morality**

The principle that a trademark may not be contrary to public order or morality is also recognized in all countries. In this connection, it is to be noted that in accordance with Article 6ter of the Paris Convention, Suite emblems, official hallmarks and, names, abbreviations and emblems of intergovernmental organizations, such" as "WIPO, under certain conditions cannot be used as trademarks. Moreover, in accordance with a special convention, the Red Cross is excluded from trademark protection, and the same applies with respect to Olympic symbol—namely the five interlaced rings—under the Nairobi Treaty on the Protection of the Olympic Symbol, which was adopted in 1981 and entered into force in 1982.

## **The Nice Agreement**

The Nice Agreement establishes a classification of goods and services for the purposes of registering trademarks and service marks (the Nice Classification). The trademark offices of Contracting States must indicate, in official documents and publications in connection with each registration, the numbers of the classes of the Classification to which the goods or services for which the mark is registered belong.

The Classification consists of a list of classes – 34 for goods and 11 for services – and an alphabetical list of the goods and services. The latter comprises some 11,000 items. Both lists are amended and supplemented periodically by a Committee of Experts in which all Contracting States are represented. The current edition of the Classification is the tenth, which entered into force on January 1, 2012.

Although only 84 States are party to the Nice Agreement, the trademark offices of about 65 additional States, as well as the International Bureau of WIPO, the African Intellectual Property Organization (OAPI), the African Regional Intellectual Property Organization (ARIPO), the Benelux Organisation for Intellectual Property (BOIP) and the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) of the European Union (EU), also use the Classification.

The Nice Agreement created a Union, which has an Assembly. Every State that is a member of the Union and has adhered to the Stockholm Act or the Geneva Act of the Nice Agreement is a member of the Assembly. Among the most important tasks of the Assembly is the adoption of the biennial program and budget of the Union.

The Agreement, concluded in 1957, was revised at Stockholm in 1967 and at Geneva in 1977, and was amended in 1979.

The Agreement is open to States party to the Paris Convention for the Protection of Industrial Property (1883). Instruments of ratification or accession must be deposited with the Director General of WIPO.

## Suggestions

In order to eradicate trademark infringement and strengthen the trade mark protection in Bangladesh, the government has to take several steps as follows:

1. There must be a trade mark registry office in each divisional city to scrutinize the trademark related matters very swiftly and to assist industrial development smoothly. Presently, in our country there are only two trademark registry offices head office in Dhaka and branch office in Chittagong. As a result, citizens of other cities have to face problems.
2. Online trademark application system should be introduced,
3. The Trademark Office should be equipped with sufficient number of registrars and examiners so that manufacturers of goods and service- providers can get their trademarks registered within the shortest possible time,
4. Carrying out regular training for officials at the trade mark registry office with a view to maintaining the provisions of international agreements (Paris Convention and TRIPS Agreement) as regards trade mark protection,
5. Trade Mark Protection Court should be primarily introduced in the divisional cities in order to dispose of suits quickly,
6. Trademark rules should also be amended periodically to reflect the changes that have taken place since enactment of the Trademark Act and Trademark Rules.
7. Law should be enacted to safeguard trademarks because lack of protection, especially for IT related works, has created opportunity for unscrupulous businesses that are making fortune out of the other people's efforts and investment and hampering competition and development of the sector.
8. Trademarks Law should be enacted to safeguard the trademark because lack of trademark protection especially for IT related works has created opportunity for unscrupulous business that are making fortune out of the other people's efforts and investment and hampering competition and development of the sector.
9. The Trademark Office should be equipped with sufficient number of Registrars and Examiners so that manufacturers of goods and service providers can get their Trademarks registered within shortest possible time because delay in publication of Trademark causes including others disputes in determining prior use and rectification of Register.
10. Trademark Rules should also be amended periodically to reflect the changes that have taken place since enactment of the Trademark Act and Trademark Rules

## CONCLUSION

Trademark infringement remains a significant challenge in Bangladesh, where the legal framework—principally governed by the Trade Marks Act, 2009—has made substantial progress but still faces notable enforcement and procedural hurdles. While the Act provides a comprehensive structure for the protection of trademark rights, practical limitations such as judicial delays, lack of public awareness, limited administrative capacity, and inconsistent enforcement have undermined its effectiveness.

The growing complexities of commerce in a globalized market demand not only stronger legal safeguards but also more efficient institutional mechanisms and public-private cooperation to curb trademark violations. Awareness campaigns, capacity-building for enforcement agencies, and streamlined dispute resolution processes are critical to safeguarding intellectual property rights. Furthermore, harmonizing domestic laws

with international standards and improving coordination among government agencies, the judiciary, and rights holders can significantly enhance trademark protection.

In conclusion, while Bangladesh has laid a solid legal foundation for addressing trademark infringement, a more proactive and integrated approach is required to translate legal provisions into effective and practical protection. Strengthening enforcement, raising stakeholder awareness, and adopting digital tools for trademark registration and monitoring will be vital steps toward ensuring a more robust and trustworthy intellectual property regime.

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