

INDIA



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1.	
Topic:	Prohibition on cigarette and tobacco advertisements
Who:	Government of India
When:	April 2003
Where:	India
What Happened:	<p>The Parliamentary Committee on Subordinate Legislation had recommended the need for legislation to stop advertising and regulation of production, supply and distribution of cigarettes and tobacco products. The Rajya Sabha passed the bill on April 9, 2003, while the Lok Sabha did the same on April 30, 2003. The Act is pending notification and is still not in force. The Act has repealed the Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975. The Act is known as Cigarettes And Other Tobacco Products (Prohibition Of Advertisement And Regulation Of Trade And Commerce, Production, Supply And Distribution) Act, 2003, ('The Act')</p> <p>The purport of the Act is to prohibit advertising of cigarettes and other tobacco products. It also seeks to prohibit sponsorship of sports and cultural events either directly or indirectly by such groups. In effect, it proposes a blanket ban on the advertising of such products.</p> <p>For cigarettes, the Act is applicable within India. For other tobacco products it applies to states of Goa, Punjab, Uttar Pradesh, West Bengal, and all the Union territories. Other states may adopt the Act by passing a resolution in the manner prescribed by the Constitution of India.</p> <p>The term 'tobacco products' has been defined under the Act to include "cigarettes, cigars, cheroots, beedis, cigarette tobacco, pipe tobacco and hookah tobacco, chewing tobacco, snuff, pan masala or any chewing material having tobacco as one of its ingredients (with whatever name called), gutka and tooth powder containing tobacco."</p> <p>The term advertisement has been defined in the Act to include:-</p> <p>"any visible representation by notice, circular, label, wrapper or other document, and also includes any announcement made orally or by any means of producing or transmitting light, sound, smoke or gas"</p>
Comments:	There is a definite attempt on the part of the legislature to prohibit advertisement of tobacco.

2.	
Topic:	New Trademark Act Comes into Force
Who:	Government of India (Trademarks)

When:	September 2003
Where:	India
What Happened:	<p>The Indian Trademarks Act 1999 came into effect on September 15 2003, repealing the old Trade and Merchandise Marks Act 1958.</p> <p>The new act was long overdue. There were a number of developments in the business environment due to increasing globalization. The new Act has emphasized on encouragement of investment, technology transfers and globalization of the Indian Intellectual Property System more in tune with the TRIPS. It has also endeavored to simplify the trademark system.</p> <p>Salient Features of the new Act</p> <ul style="list-style-type: none"> • Service marks are now registrable. The new classification of services are listed in Classes 35 to 42 (being residual class), which cover all the services. • An expedited examination system has been introduced, whereby the registrar will issue an examination report within three months upon request and payment of an additional official fee. • Multiple-class applications are now available. • Collective marks are registrable. • Well-known marks are protected. • Shapes of goods and packaging and combinations of colours are now registrable. • Trademark registration is now valid for a period of 10 years (instead of seven years under old law) from the date of registration, which is the application date. • There is now only a single register, with a simplified procedure for registration. The previous system of Part A and Part B registration has been done away with. • Intellectual Property Appellate Tribunal has been set up to hear appeals against decisions of the registrar of trademarks, to enable the swift resolution of appeals and rectification applications. • Enhanced punishment for offences relating to trademark infringement is now available. <p>Border enforcement measures have been enhanced.</p>
Comments:	The Indian trade mark system has come of age as per the commitments made in the WTO forum the new Act has provided comprehensive measures for better protection of trade and service marks and speedy and simplified procedures.

3.	
Topic:	Trademark Infringement
Who:	Mumbai Hgh Court
When:	2 nd June 2003
Where:	India
What Happened:	Alfred Dunhill has held a trademark registration for DUNHILL in India since 1945. In its complaint it was averred that Dunhill Securities Ltd (DSL), a Mumbai-based investment company was using the "DUNHILL" trademark as part of its corporate name and trading style. Further DSL also used the mark on its stationery and promos. On becoming aware of DSL's existence, Alfred Dunhill filed an action for permanent injunction against DSL restraining DSL from using the Dunhill brand in any way whatsoever.

	The complaint was successful. It was held that DSL's use of DUNHILL trademark which is highly distinctive and well-known globally, would lead to immense confusion among the consumers.
Comments:	There is enough judicial activism in India to restrict use of another's brand name which would result in confusion to the public.

4.	
Topic:	Action against counterfeiters
Who:	Delhi High Court
When:	12 th May 2003
Where:	India
What Happened:	<p>Cartier International BV, are owners of the famous CARTIER trademark all over the world with trademark registration rights in various countries including India. Cartier became aware that a Mumbai based dealer was manufacturing and selling counterfeit ready-made garments, leather goods, spectacle cases and other similar items bearing a counterfeit CARTIER mark.</p> <p>Cartier filed suit for passing off in the Delhi High Court seeking a permanent injunction against the defendants from manufacturing, selling, advertising or dealing in any way in ready-made garments or other related goods under the CARTIER trade mark and related trademarks, or under any other mark which might be identical or deceptively similar to the said mark.</p> <p>The Delhi High court held that it was a case of willful infringement and passed an <i>ex parte</i> decree in favour of CARTIER, permanently restraining the defendants, their agents, servants and all others acting for and on their behalf from manufacturing, selling, offering for sale, advertising, and directly or indirectly dealing in ready-made garments and other related goods bearing the CARTIER or similar trademarks, and from using the Cartier logo in any manner.</p>
Comments:	Use of brand name of another person on counterfeit goods amounts to infringement.

5.	
Topic:	Brand Protection
Who:	Delhi High Court
When:	6 th May 2003
Where:	India
What Happened:	<p>Bayer AG (Bayer) filed a petition before the Delhi High Court seeking injunction against Manabay Remedies, a Mumbai-based company from using the mark INCIDAL and certain packaging material deceptively similar to that of Bayer. In the petition it was averred that even the colour scheme and pattern of the packaging material were substantial reproductions of the packaging of Bayer's INCIDAL drug which is used to treat coughs and colds.</p> <p>The Hon'ble Delhi High Court temporarily restrained Manabay Remedies from using the mark INCIDAL and the packaging material which were a substantial reproduction of Bayer's packaging material.</p>
Comments:	One cannot get way with the brand name and get up of a global operator.

6.	
Topic:	Amendments to Cable Television Regulations
Who:	Government of India
When:	16 th October 2003
Where:	India
What Happened:	<p>Conditional Access System (CAS) All subscribers to cable television in India receive free-to-air as well as pay channels at a rate fixed by the cable operator. These rates vary from city to city and even in areas and localities within them. The subscriber pays for all channels, regardless of what he or she wishes to receive.</p> <p>A conditional access system (CAS) is designed to provide free-to-air channels at a minimum cost, while requiring a subscription for viewing other channels. The system aims to make cable television operations more transparent. Although CAS implementation has been delayed, it is proposed that the system initially be deployed in Delhi, Mumbai, Calcutta and Chennai.</p> <p>With the introduction of the Cable Television Networks Regulation Amendments Act 2002, the government has taken tough measures against irregularities in the broadcasting industry and has stipulated that the illegal distribution of channels will constitute a cognizable offence.</p> <p>There are provisions laying down the advertising code. Advertising on cable television should be designed to conform to the laws of the country and should not offend morality, decency or the religious sentiments of subscribers. The earlier Cable Act did not prohibit advertisements that could hurt religious sentiments, apparently due to an oversight. This has been rectified in the amendment act.</p> <p>No advertisement may belittle any race, caste or creed, or incite crime, disorder or violence. Advertisements projecting a derogatory image of women are not allowed, and the cable operator must ensure that the female form is portrayed in a tasteful manner in the programming it carries.</p> <p>The Cable Television Networks Rules 1994, together with the amendment act, prohibit advertising that directly or indirectly promotes the production, sale or consumption of tobacco products, alcohol and other intoxicants. In the past, promoters of alcohol have often resorted to surrogate advertisements, where the brand name of a product normally associated with alcohol is advertised as another product. Surrogate advertisements can also indirectly advertise or promote a product without actually displaying the product.</p> <p>Alcohol and tobacco advertisements are now banned on all channels transmitted or retransmitted in India. Previously, only channels uplinked from India had to adhere to this code. As a result, Doordarshan and a handful of other channels uplinking from India through VSNL (India's leading internet service provider) have been prohibited from accepting liquor and tobacco advertisement. Some of these channels received up to 30% of their advertising revenues from such advertisements. The government aims to provide a level playing field for all channels, including Doordarshan.</p> <p>Any contravention of the provisions of the amendment, including unauthorized viewing, distribution or redistribution of the broadcast signal, shall be treated as a cognizable offence.</p>
Comments:	The present Government is comparatively strict when it comes to advertising

	code for the advertisers especially of tobacco and alcohol.
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7.	
Topic:	Re. Centre For Enquiry into Health and Allied Themes (Cehat) & Others
Who:	Supreme Court
When:	10 th September 2003
Where:	India
What Happened:	<p>The Hon'ble Supreme Court delivered a judgement against the advertisement for pre-natal determination of sex and female foeticide. The decision was on the implementation of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 renamed after amendment as "The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act" which is the normal function of the Executive.</p> <p>IT was held that all State Government and Union Territory Administrations are directed to create public awareness against the practice of pre-natal determination of sex and female foeticide through advertisements in the print and electronic media by hoarding and other appropriate means.</p>
Comments:	The apex court has rightly directed the executive to use its machinery to advertise for the benefit of the masses against the practice of sex determination tests with a view to curb foeticide of female child which is a heinous crime.