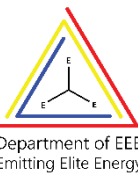




A T M E
College of Engineering



Module-4

Copyrights and Related Rights:

Course Code: **BRMK557**

Teaching Hours/Week (L:T:P: S) :1:2:0:0

Total Hours of Pedagogy :40

Credits :02

CIE Marks :50

SEE Marks :50

Total Marks :100

Exam Hours :03

Course Objectives:

- CO1. To Understand the knowledge on basics of research and its types.
- CO2. To Learn the concept of Literature Review, Technical Reading, Attributions and Citations.
- CO3. To learn Ethics in Engineering Research.
- CO4. To Discuss the concepts of Intellectual Property Rights in engineering.

Copyrights and Related Rights: Classes of Copyrights. Criteria for Copyright. Ownership of Copyright. Copyrights of the Author. Copyright Infringements. Copyright Infringement is a Criminal Offence. Copyright Infringement is a Cognizable Offence. Fair Use Doctrine. Copyrights and Internet. Non-Copyright Work. Copyright Registration. Judicial Powers of the Registrar of Copyrights. Fee Structure. Copyright Symbol. Validity of Copyright. Copyright Profile of India. Copyright and the word 'Publish'. Transfer of Copyrights to a Publisher. Copyrights and the Word 'Adaptation'. Copyrights and the Word 'Indian Work'. Joint Authorship. Copyright Society. Copyright Board. Copyright Enforcement Advisory Council (CEAC). International Copyright Agreements, Conventions and Treaties. Interesting Copyrights Cases

Trademarks: Eligibility Criteria. Who Can Apply for a Trademark. Acts and Laws. Designation of Trademark Symbols. Classification of Trademarks. Registration of a Trademark is Not Compulsory. Validity of Trademark. Types of Trademark Registered in India. Trademark Registry. Process for Trademarks Registration. Prior Art Search. Famous Case Law: Coca-Cola Company vs. Bisleri International Pvt. Ltd.



- Copyright is a legal concept that grants the original author of a work exclusive rights to its use and distribution.
- At its core, copyright is the right given to the copyright owner to protect their original expression of ideas once they are manifested in a tangible form.
- This means that *for copyright eligibility, the work must be more than just an idea; it must be expressed in some medium of expression, be it on paper, digitally, or any other form.*
- From graphic designs to audiovisual creations, a vast array of works can be copyright-protected.
- This protection ensures that the rights of copyright are upheld, allowing the copyright owner to control the reproduction, distribution, and adaptation of their work.
- For instance, digital content, like software or online articles, falls under the purview of copyright, as do more traditional forms like books or paintings.
- It's essential to understand that copyright doesn't protect the idea itself but the unique way it's expressed.

Types of Copyright

- Copyright encompasses a broad spectrum of protections for various forms of artistic expression.
- The most common types include the literary work category, which safeguards written content, and the architectural work category, which focuses on designs and blueprints.
- The type of copyright protects individual authors, such as the author of a music work, ensuring their unique artistic forms are preserved.
- While the actual recording of music falls under a distinct category, all these protections require the work to be in a tangible, physical medium, ensuring material form to the creator's vision.

Types of Copyright

1. Literary Copyright
2. Dramatic Copyright
3. Musical Copyright
4. Artistic Copyright
5. Sound Recording Copyright
6. Cinematographic Copyright
7. Choreographic Copyright
8. Architectural Copyright
9. Software and Computer Programs
10. Compilations and databases

1. Literary Copyright

This category of copyright encompasses original and distinctive literary compositions.

Such creations can range from scripts, novels, biographies, and academic theses to technical manuals and software codes.

The value, style, or literary quality of the work doesn't influence its eligibility for copyright.

For example, J.K. Rowling holds the literary copyright for the "Harry Potter" series.

Holding a copyright for literary creations grants exclusive rights, including:

- Adapting the original work.
- For a public performance of work.
- Distributing copies of the work to the audience.
- Replicating the original composition.
- Translating the work into other languages.

2. Dramatic Copyright

Theatrical compositions fall under the umbrella of literary creations but have their own distinct characteristics.

They encompass scripts prepared for stage performances, mime shows, plays, dance choreography, and any written work intended for live enactment.

However, it's essential to note that these do not encompass motion pictures or films.

Holding a copyright for theatrical compositions grants the owner specific privileges, such as:

- Adapting or modifying the original piece.
- Replicating or reproducing the composition.
- Sharing or presenting the work to a broader audience.
- Incorporating the piece into any cinematographic film.

Example:

*Rabindranath Tagore's play
"Chitrangada" is an example of
a dramatic work*

3. Musical Copyright

- Musical works, are distinct entities that are eligible for copyright protection.
- It's important to note that these works **focus solely on the musical composition** and **exclude lyrics or actual sound recordings**.
- To safeguard a musical composition, one must register it separately with the Copyright Office. Often, sound recordings are intrinsically linked to these musical compositions, but they are distinct entities in the realm of copyright.

The author of music work in India has following exclusive rights:

- **The ability to reproduce the composition.**
- **Sharing or presenting the composition to a wider audience.**
- **Adapting or modifying the original piece.**
- **Performing the composition live in front of an audience.**
- **Distributing copies of the composition to the public.**
- **Incorporating the composition into sound recordings or films.**

Example:

A.R. Rahman, the Oscar-winning composer, holds musical copyrights for his compositions in Indian films such as "Slumdog Millionaire" and "Lagaan."

4. Artistic Copyright

Visual creations, commonly referred to as artistic works, encompass a broad spectrum of original creations.

Under the Copyright Act of 1957, this category safeguards a diverse range of artworks.

This includes, but is not limited to, *paintings, photographs, architectural designs, sketches, diagrams, cartoons, engravings, sculptures, graphics, and blueprints*.

Examples: Ravi Varma Paintings

Holding a copyright for visual creations in India gives the owner with specific privileges, such as:

- Distributing copies of the artwork to the broader public.
- Incorporating the artwork into films or other visual media.
- Modifying or creating derivatives of the original piece.

5. Sound Recording Copyright

Sound recordings encompass any form of captured sound, regardless of the storage medium used.

This can range from a *song featuring vocals with or without instrumental accompaniment, spoken word content like podcasts, or any other form of audible content.*

It's noteworthy that while sound recordings can include musical compositions, the original composer's consent is crucial for the copyright protection of the recorded version. *Ex: The music label T-Series holds sound recording copyrights*

Holding a copyright for audio recordings grants the owner specific privileges, such as:

- The ability to sell or lease copies of the recording.
- Broadcasting the audio content to a wider audience.
- Producing derivative works or recordings inspired by the original.

6. Cinematographic Copyright

Cinematograph films encompass all visual recordings that display moving images.

These are creations captured through various methods, whether analog or digital, and they primarily include video films.

Essentially, any visual content stored through any medium or technique falls under this category.

Owning the copyright for a cinematographic film bestows the holder with distinct privileges, such as:

- The right to rent out, sell, or distribute copies of the movie.
- The authority to present the film to a broad audience.
- The ability to reproduce or create adaptations based on the original film.

Examples: The Indian film "Baahubali: The Beginning," directed by S.S. Rajamouli, is an example of a cinematographic work protected by copyright in India.

7. Choreographic Copyright

Choreographic works are designed to safeguard *unique dance sequences, patterns, and other forms of organised movement*.

Holding the copyright for such works grants the choreographer specific rights, including:

- The privilege to present the choreography to the public.
- The authority to reproduce or create adaptations of the original choreography.

8. Architectural Copyright

Architectural copyright pertains to the *unique design of a structure, safeguarded in various tangible medium*, be it the actual building, the architectural plans or blueprints, or detailed drawings.

This copyright ensures that unauthorised parties cannot replicate the building based on its original design, nor can they produce, sell, or import items that incorporate that specific design.

Essentially, it protects the intellectual property of architects and designers, ensuring their innovative creations remain exclusive and aren't exploited without permission

9. Software and Computer Programs

- Computer software and programs, from their foundational code to their user interfaces, can be shielded under copyright.
- This ensures that the intellectual effort behind creating a software solution is recognized and protected.

10. Compilations and databases

- Compilations, whether they are literary anthologies, encyclopedias, directories, or databases, can be copyrighted.
- These collections exhibit a degree of originality and creativity in how the content is selected or arranged, ensuring that the effort behind curating such compilations is acknowledged and safeguarded.

What Is Copyright Infringement?

- Copyright infringement is the use or production of copyright-protected material without the permission of the copyright holder.
- Copyright infringement means that the rights afforded to the copyright holder, such as the exclusive use of a work for a set period of time, are being breached by a third party.
- Music and movies are two of the well-known forms that suffer from significant amounts of copyright infringement.
- Infringement cases may lead to liable obligations

Copyright Infringement in India

- As per the Copyright Act, 1957, the use of a copyrighted work without the permission of the owner results in copyright infringement.
- *Infringement occurs when a third person unintentionally or intentionally uses/copies the work of another without giving credit.*

It is usually classified into two categories,

primary and secondary infringement.

Primary infringement occurs when there is an actual act of copying, while secondary infringement occurs when unauthorized dealings take place, such as selling or importing pirated books, etc.

- In the case of **secondary infringement**, the infringer will know about infringement, while in the case of primary infringement, the infringer may or may not know about infringement.

The following elements should be present for copyright infringement:

- **The copyrighted work is the original creation of the author**
- **The copyright infringement work is actually copied from the work of the author**

Instances Where Copyright Infringement Occurs

As per the Copyright Act, 1957, a copyright infringement occurs in India in the following cases:

- Copies of copyrighted work are made for hire/sale without authority or permission, such as online piracy
- Infringing copies are distributed for personal and trade gains
- Copyrighted work is performed in a public place
- Infringing copies are imported into India
- Public exhibition of infringing copies prejudicial to the owner
- Reproduction of a dramatic, literary, artistic or musical work other than in the form of a cinematograph film
- Creating a recording embodying the copyrighted sound recording
- Copy of the cinematographic film

- *The Doctrine of fair use*
- The "Doctrine of fair use" emerged as courts sought to strike a balance between the rights of copyright owners and the public's interest in permitting copying in restricted circumstances. An essential motive behind this concept is that not all copying should be prohibited, especially when it serves a socially significant purpose or is used for "transformative use", such as in the pursuit of criticism, news reporting, education, and research or creating a parody.
- The Copyright Act codifies the fair use theory, which was developed by the courts. When deciding whether or not an action falls under the Act's "fair use" provisions, four points must be taken into account. They are as follows:
 - The nature of the copyrighted work,
 - The amount and substantiality of the portion used in respect to the copyrighted work as a whole,
 - The effect of the use upon the potential market for or value of the copyrighted work.

- Doctrine of Fair Use in India
- Under Indian law, the Copyright Act of 1957, states in its provisions that fair dealing with a literary, dramatic, musical, or artistic work that is not a computer program is not an infringement of copyright.
- The term "Fair dealing" includes anything excluding a computer program that is used for the purpose of
 - (i) private or personal use," including research;
 - (ii) criticism or review of that work or any other work;
 - (iii) reporting on current events and affairs, including reporting on a lecture given in public.
- Reproducing a literary, dramatic, musical, or artistic work for news reporting in a newspaper, magazine, or similar periodical; broadcasting; filming; photographing; utilizing clips from a performance or broadcast in news reporting; or for genuine review, teaching, or study falls under the fair use or fair dealing provision. Making copies or modifications to a computer program by the rightful owner for the purpose for which it was provided or to provide temporary relief against loss, destruction, or damage to the software is likewise protected under the umbrella of fair use

Do Copyright Laws Apply on the Internet?

- The copyright laws apply on the internet just as they apply to more traditional media.
- Unless the copyright owner has granted permission or an exception or limitation in the copyright law applies, activities like uploading, mailing, distributing, and transmitting whole (or even partial) copies of a copyrighted work over the internet may be a copyright infringement. Penalties can be as high as \$150,000 for each copyrighted work infringed.

Copyright Registration Process and Procedure

- Copyright is a fundamental concept that protects the work of creators.
- It gives them exclusive control over how their creations are used, shared, and reproduced.
- Beyond understanding the core concept of copyright, this article will explore the significance of copyright registration.
- This process ensures legal protection and empowers creators to have greater control over their work. Whether you are a creator seeking to protect your content or an enthusiast interested in the legal aspects of creative expression, this article will provide valuable insights into copyright and the registration process.
- India Filings offers a convenient platform for online copyright registration, encompassing a wide range of creations, including musical compositions, song lyrics, videos, and more.

Benefits of Copyright Registration

Copyright registration offers several advantages to creators and intellectual property owners, including the following:

- 1. *Safeguarding the Owner:*** Copyright registration provides copyright owners exclusive rights over their work, encompassing reproduction, distribution, adaptation, dissemination, and translation.
- 2. *Legal Protection:*** Creators benefit from legal protection, ensuring their work cannot be reproduced without proper authorization.
- 3. *Enhancing Brand Value:*** A registered copyright serves as proof of ownership, allowing creators to use it for marketing purposes and contributing to goodwill creation.

- **Benefits of Copyright Registration**

4. ***Global Reach:*** Copyright protection extends internationally. If a work is copyrighted in one country, it enjoys similar privileges in other countries, including India.
5. ***Copyright as an Asset:*** Copyright is considered an intellectual property asset, making it an intangible resource that can be sold or licensed, adding economic value.
6. ***Owner Visibility:*** Copyright registration raises the work profile, making it accessible worldwide and searchable in copyright registries. It also prevents unauthorized use of the work once registered.
7. ***Economic Stability:*** Copyright registration promotes economic stability, enabling creators to reproduce and monetize their art in various forms, contributing to their financial well-being.

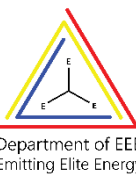
Legal Rights of a Copyright Owner

As a copyright owner, you are entitled to a range of legal rights, which include:

- **Claiming Authorship:** You can claim authorship of your published work, asserting your paternity over the creation.
- **Reproduction and Storage:** The owner can reproduce the work in any tangible form and store it in any medium through electronic means.
- **Control Over Publication:** You can decide where and where not to publish your work, exercising the publication right.
- **Public Performance and Communication:** The owner may publicly perform or communicate the work to the public. You also have the authority to create translations or adaptations of the original work.
- **Protecting Reputation:** In case of any potential harm to your image or reputation, you have the right to take necessary preventive actions.
- **Selling or Transferring:** The owner can sell or transfer the copyright, granting others the rights to use, reproduce, or adapt the work as specified in the transfer agreement.
- These legal rights empower copyright owners to manage and protect their creative works while allowing them to control their intellectual property.



Non-Copyright Work

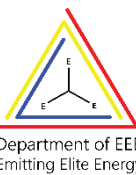


The works not under the jurisdiction of Copyrights are as follows:

- The ideas, concepts, and principles themselves cannot be protected under Copyright, only the form in which they are expressed can be copyrighted.
- Facts, such as scientific or historical discoveries, are not copyright protected. Any fact a person discovers in the course of research cannot be Copyright protected. For example, an author of a book on “**Buddhism**” takes ten-fifteen years to gather all the necessary materials and information for his work. At a great expense, the author travels to various museums, libraries and excavations sites. However, after the book is published, anyone is free to use the underlying facts, provided they express the information on their own.
- Copyright does not protect **titles, names, slogans, short phrases, short word combinations**, methods, or factual information.
- Certificates are not considered as Copyrightable subject matter as there is not much scope for creativity.
- Digitally created works and Copyrighted works transformed into a digital format and placed on the internet are Copyright protected.
- The Copyright registration for a website, as a whole, is not possible. However, different components/rudiments of a website



Copyright Registration



- It is merely a **prima facie (Firs Impression)** proof of an entry in respect of the work in the Copyright register maintained by the Registrar of Copyrights.
- The certificate of registration serves as prima facie evidence in a court in cases of disputes relating to ownership or creation of Copyright, financial matters, transfer of rights, etc.

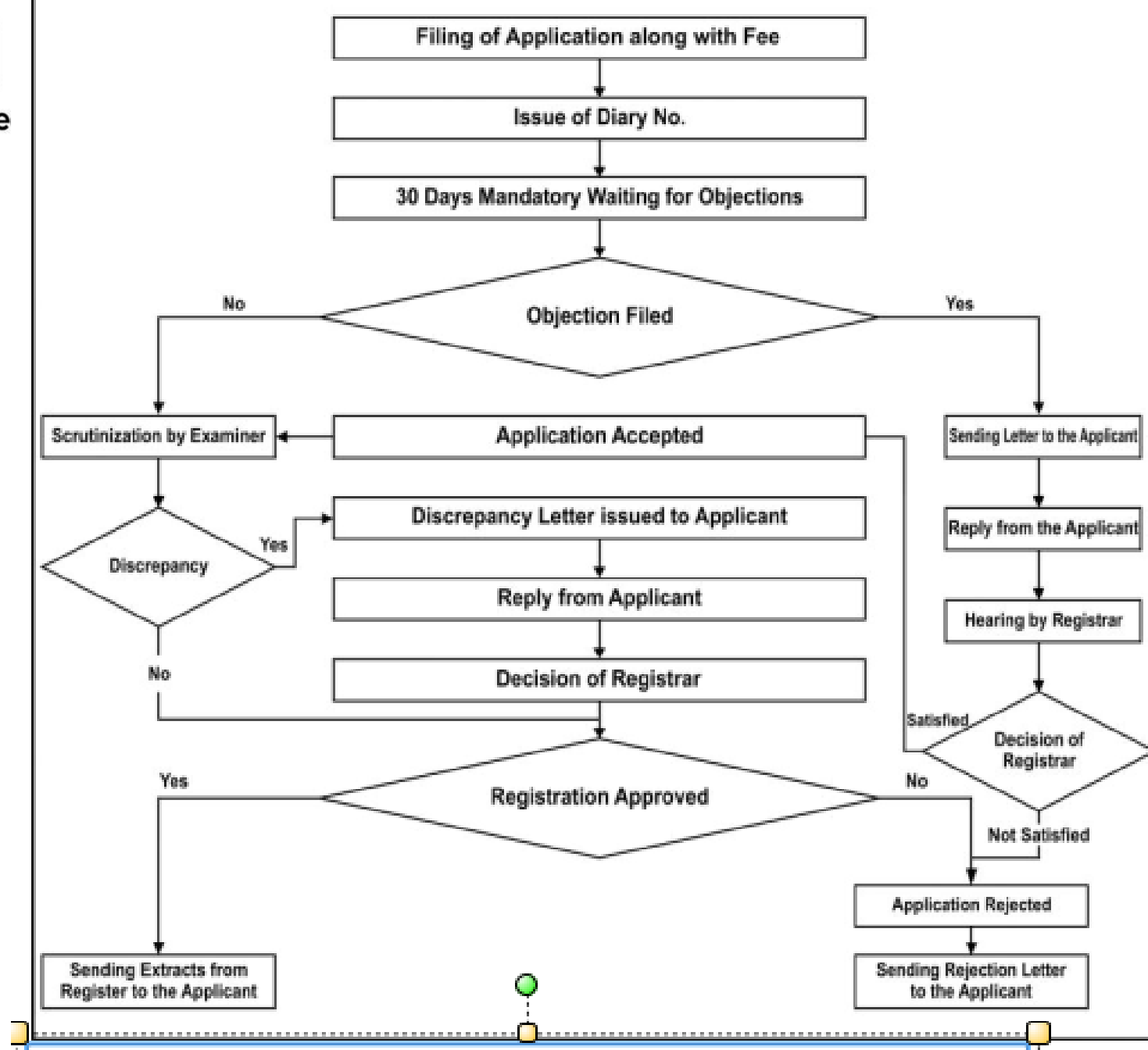


Table 2.5: Important forms pertaining to Copyrights.

S. No.	Name of Form	Form No.
1.	Application form for registration of Copyright	Form-XIV
2.	Application form for registration of changes in particulars of Copyright	Form-XV
3.	Registration of a Copyright Society	Form-VIII
4.	Application form for the relinquishment of Copyright	Form-I

Source: <http://Copyright.gov.in/frmformsDownload.aspx>



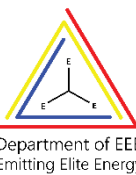
Table 2.6: Fee structure for Copyrights.

Attribute	Fee (₹)
For an application for registration or Copyright Literary, Dramatic, Musical or Artistic work	500/- per work
For an application for registration of Copyright in a Cinematograph Film	5,000/-
For an application for registration of Copyright in a Sound Recording	2,000/-
Provided that in respect of a Literary or Artistic work which is used or is capable of being used in relation to any goods or services	2,000/-
Making any change in Literary, Dramatic, Musical or Artistic work	200/-
Provided that in respect of a Literary or Artistic work which is used or is capable of being used in relation to any goods or services	1,000/-



For an application for registration of change in particulars of Copyright entered in the Register of Copyrights in respect of Cinematograph Film	2,000/-
For an application for registration of changes in particulars of Copyright entered in the Register of Copyrights in respect of Sound Recording	1,000/-
For an application for prevention of importation of infringing copies per place of entry	1,200/-

Source: <http://Copyright.gov.in/frmFeeDetailsShow.aspx>



The important things which may be mentioned as a Copyright mark on Copyright creation are:

- The Copyright symbol © (the letter C in a circle), or the word. “Copyright”, or the abbreviation ‘Copr’.
- In the case of compilations or derivative works incorporating previously published material, the year with the date of the first publication of the compilation or derivative work should be mentioned. The year date may be omitted for pictorial, graphic, sculptural work, greeting cards, postcards, stationery, jewellery, dolls and toys.
- The name or the abbreviation by which the name can be recognized of the owner of the Copyright, or a generally known alternative designation of the owner can be mentioned.
- The elements for sound recordings generally require the same three elements, except the symbol is ® (the letter P in a circle) instead.

Validity of Copyright

In general, the validity of Copyright is for 60 years. This period starts either from the year after the death of the author (in case of literature, dramatic, musical and artistic works) or from the date of publication of the work (in case of cinematograph films, sound recordings, photographs, posthumous publications, works of government and works of international organisations).

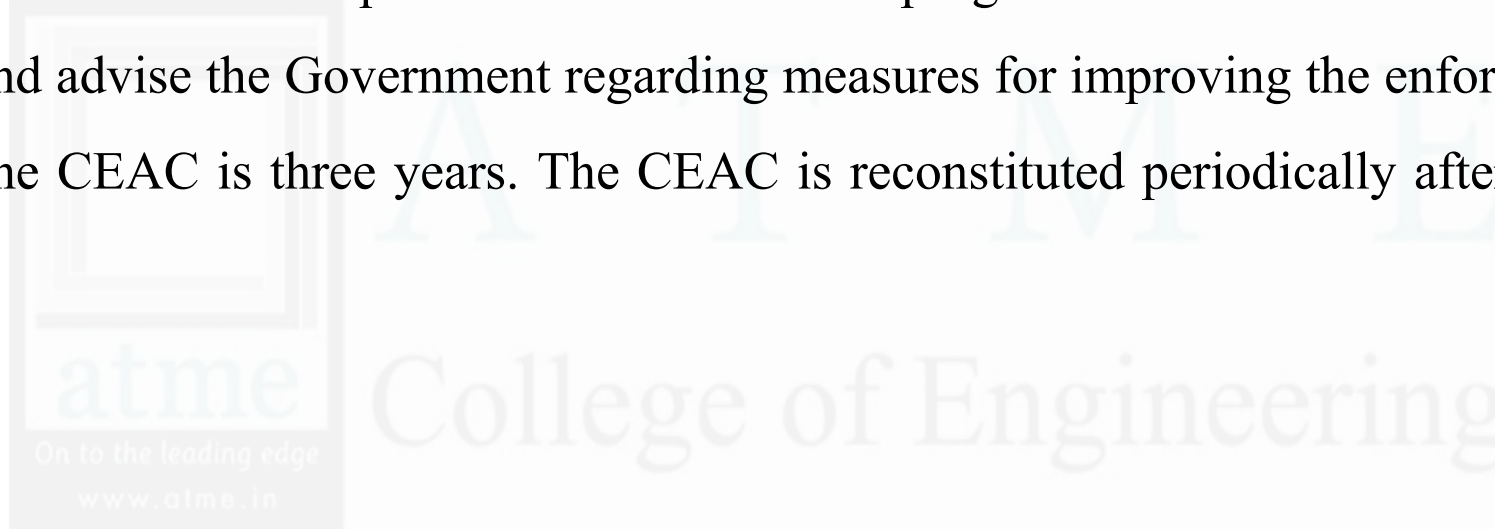


The Copyright Board is a regulatory body constituted by the government, to perform judicial functions as per the **Copyright Act of India**. The Board comprises of a **Chairman and members (2-14) to arbitrate on Copyright cases. The Chairman of the Board is of the level of a judge of a High Court**. As per the Act, the Board has the power to:

- Hear appeals against the orders of the Registrar of Copyrights.
- Hear applications for rectification of entries in the Register of Copyrights.
- Adjudicate upon disputes on the assignment of Copyrights.
- Grant compulsory licences to publish or republish works (in certain circumstances).
- Grant compulsory licence to produce and publish a translation of a literary or dramatic work in any language after seven years from the first publication of the work.
- Hear and decide disputes as to whether a work has been published or about the date of publication or the term of Copyright of a work in another country.
- Fix rates of royalties in respect of sound recordings under the cover-version provision.
- Fix the resale share right in original copies of a painting, a sculpture or a drawing and original manuscripts of a literary or dramatic or musical work.

Copyright Enforcement Advisory Council (CEAC)

- In 1991, the Government set up a CEAC to review the progress of enforcement of the Copyright Act periodically and advise the Government regarding measures for improving the enforcement of the Act. The term of the CEAC is three years. The CEAC is reconstituted periodically after the expiry of the term.



International Copyright Agreements, Conventions and Treaties

Any creative work is not protected and enforced automatically worldwide because Copyright laws are territorial by nature i.e. Laws are valid only in the country in which they have been created. To secure protection to Indian works in foreign countries, the author needs to apply separately to each country or through dedicated international Conventions on Copyright and Neighbouring (related) Rights, provided a country is a member of such Conventions. India is a member of the following Conventions:

1. Berne Convention for the Protection of Literary and Artistic Works, 1886.
2. Universal Copyright Convention, 1952.
3. Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961.
4. Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties, 1979.
5. Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, 1995

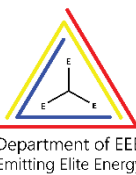
International Copyright Agreements, Conventions and Treaties

1. ***David vs. Macaques, Indonesia, 2011*** - In 2011, a UK-based photographer David Slater put his camera on a tripod in the wildlife sanctuary to click the photograph of Macaques monkeys. The Macaques were very curious about the equipment and they found the flashlight fascinating. One monkey clicked a selfie photograph which became very famous and legally controversial on the matter of Copyright. Theoretically, the monkey is the holder of Copyright as he clicked the photo. Practically, David Slater was the claimant of the Copyright. The dispute entered judicial quarters between People for the Ethical Treatment of Animals (PETA) and David Slater. Now, the settlement has been concluded. The photographer i.e. David Slater withholds the Copyright of the picture for having a substantial contribution, but he would pay 25% of the royalty share to the wildlife sanctuary where the monkey lives (https://www.wipo.int/wipo_magazine/en/2018/01/article_0007.html).
2. ***Happy birthday to you' case law*** - According to the Guinness World Records, 1998, it is the most recognized song in the English language. The melody of '**Happy Birthday to You**' originates from the song '**Good Morning to All**', which has traditionally been attributed to American Sisters, namely Patty Smith Hill and Mildred J. Hill, in 1893. The sisters composed the melody of 'Good Morning to All' to make it more interesting for the children. In 1935, Summy Company registered the Copyright on the Piano Setting on the Song. **In 1999 Warner/Chappell acquired the company** and started taking royalty for the happy birthday song and earned a huge amount. After mediation by the Federal court, Warner Music, through its publishing subsidiary Warner/Chappell, agreed to pay the settlement

- to a class of ‘thousands of people and entities’ who had paid licensing fees to use the song since 1949 because only the melody was registered and not the lyrics. Now the song is in the public domain.
3. *Amitabh Bachchan to lose Copyrights over his father’s works in 2063* - Father of renowned actor Mr. Amitabh Bachchan, (late) **Shree Harivansh Rai Bachchan** was a noted poet and Hindi writer. His most famous work was *Madhushaala (1935)*. He was the recipient of the *Sahitya Akademi award and the Padma Bhushan*. He also did Hindi translations of Shakespeare’s *Macbeth and Othello*. He passed away on 18th January 2003, at the age of 95. As per the Copyright Act, 1957, the rights over his work will be completed in the year 2063 (rights remain with the author for his lifetime plus 60 years).



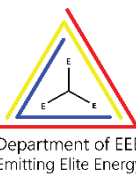
Trademark



- Trademark (or Trade Mark) is a unique symbol which is capable of identifying as well as differentiating products or services of one organization from those of others. The word ‘Mark’ stands for a sign, design, phrase, slogan, symbol, name, numeral, devise, or a combination of these. Essentially, the Trademark is anything that identifies a brand to a common consumer.

Eligibility Criteria

- For goods/services to be legally classified as Trademark, they need to pass the following conditions:
- **Distinctiveness** - The goods and services for which the protection is sought should possess enough uniqueness to identify it as a Trademark. It must be capable of identifying the source of goods or services in the target market.
- **Descriptiveness** - The Trademark should not be describing the description of the concerned goods or services. Descriptive marks are unlikely to be protected under Trademark law. However, descriptive words may be registered if they acquire —secondary meaning, such as the brand name ‘**Apple**’ is used by a USA based multinational company that manufactures electronic gadgets.
- **Similarity to the prior marks** - The mark should be unique and should not be having similarity to the existing marks



- Any person who is a proprietor of the Trademark is eligible to apply for registration of Trademark. The mark can be filed collectively by two or more applicants and for that purpose, support documents need to be submitted. An organization or association can file for the collective mark and the same can be used by its members. The most appropriate example for this mark is the ‘**Reliance**’ **symbol**, which indicates all products falling under the organization.

Designation of Trademark Symbols

-  Represents that the Trademark is unregistered. This mark can be used for promoting the goods of the company.
-  Represents that the Trademark is unregistered. This mark can be used for promoting brand services.
-  Represents a registered Trademark/Service. The applicant of the registered Trademark is its legal owner.

Classification of Trademarks

- Goods and Services under Trademarks are classified as per the ‘**Nice Agreement**’ (1957) administered by **WIPO**. A total of **149 countries** (**84 state parties who are signatory to the Agreement** and 65 additional states who are following this classification for the Trademarks) and others (African Intellectual Property Organization, African Regional IP Organization and Trademark Office of European Union) are using the same Trademark classification.
- Trademark classification comprises of **45 classes, out of which 34 are for goods and 11 are for services**. (<http://euipo.europa.eu/ec2/static/html/nice-general-remarks.en.html;jsessionid=8FBC790A663FAC9092ACCDD9ED1AC65E.e c2t1>).
- Two examples of the classes are:
- **Class 1** is for Chemicals for use in industry, science and photography, agriculture, horticulture and forestry; Unprocessed artificial resins, unprocessed plastics; Fire extinguishing and fire prevention compositions; Tempering and soldering preparations; Substances for tanning animal skins and hides; Adhesives for use in industry; Putties and other paste fillers; Compost, manures fertilizers; Biological preparations for use in industry and science.
- **Class 45** is for legal services; Security services for the physical protection of tangible property and individuals; Personal and social services rendered by others to meet the individuals’ needs.

As Registration of a Trademark is not compulsory, but registration provides certain advantages to the proprietor of the Trademark, such as:

- **Legal Protection** – prevents the exploitation of the Registering Trademark by other companies/organizations/individuals, without proper authorization by the legal owner/s of the Trademark. In case of legal suits, a registered Trademark can serve as a potent evidence of the lawful proprietorship of the Trademark.
- **Exclusive Right** - grants the Trademark owner full rights to use it in any lawful manner to promote his business.
- **Brand Recognition** - products/ services are identified by their logo, which helps create brand value over time. A strong brand is a huge pull for new customers and an anchor for existing customers. Registering a Trademark early and using it will create goodwill and generate more business for the brand owner.
- **Asset Creation** - registered Trademark is an intangible property of the organization. It can be used for enhancing the business of the company as well as drawing new clients and retaining old one by the account of brand identification

Validity of Trademark

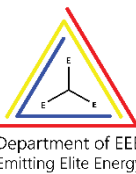
- In India, a **registered Trademark is valid for 10 years**. The period can be extended every 10 years, perpetually. As per the Indian Trademarks Act, the **renewal** request is to be filed in the **form 'TM-R' within one year before the expiry** of the last registration of the mark.

Types of Trademark Registered in India

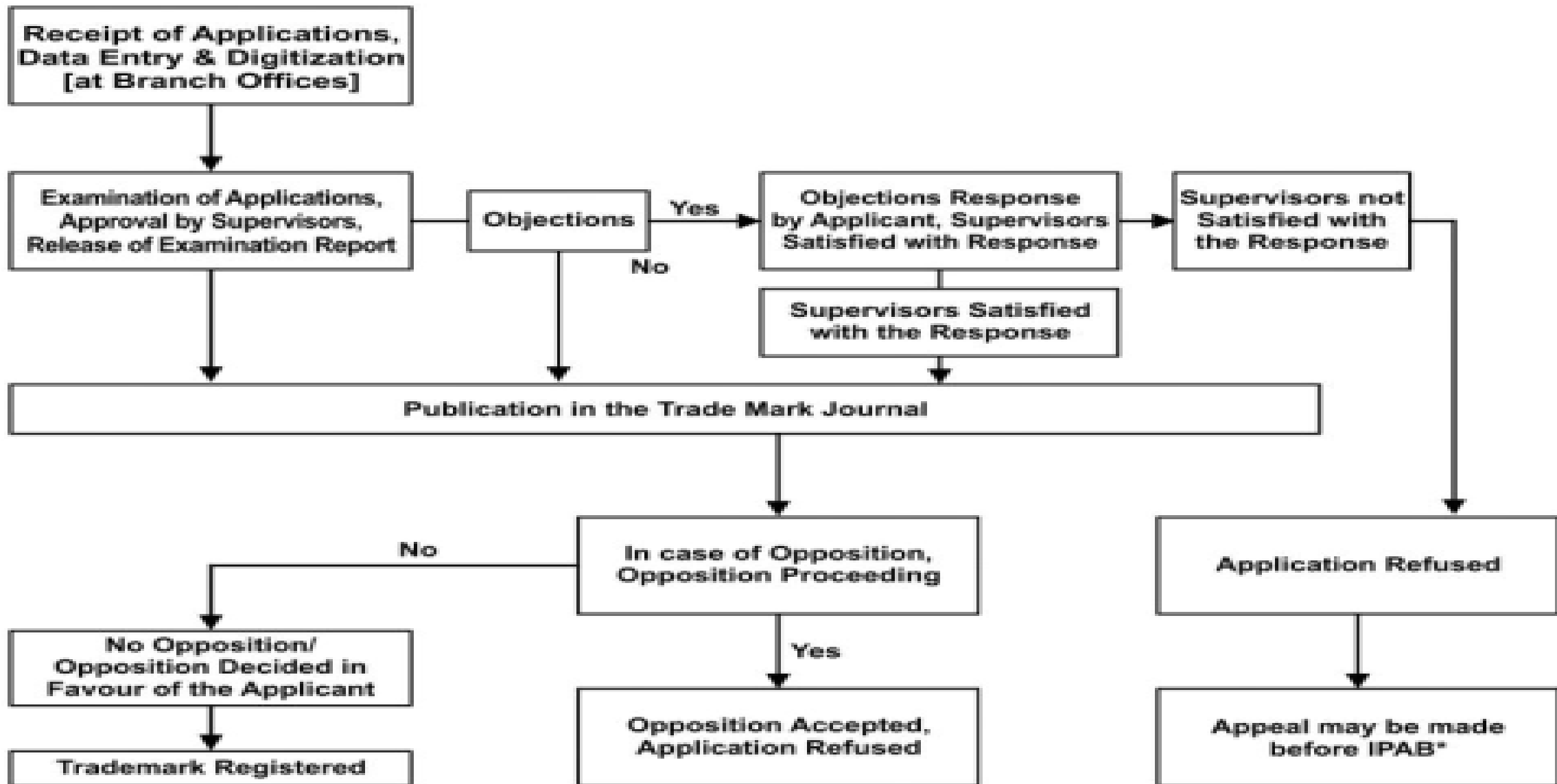
- Trademark can be a word that must be able to speak, spell and remember. It is highly recommended that one should choose the Trademark like invented word, created words, and unique geographical name. To ensure all these characteristics in a Trademark, it is suggested to conduct a market survey to ensure if a similar mark is used in the market. Following are some examples of the registerable Trademarks:
- Example:
 1. *Any name including personal or surname of the applicant or predecessor in business or the signature of the person e.g. the Trademark '**BAJAJ**' is named after industrialist **Mr. Jamnalal Bajaj**.*
 2. *A word having no relevance to the product/services e.g. Trademark '**INDIA GATE**' is being used for food grains and allied products.*
 3. *Letters or numerals or any combination thereof e.g. '**YAHOO**' is the abbreviation of the phrase '**Yet Another Hierarchical Official Oracle**'. It has now become a worldwide famous Trademark.*

Table 2.7: Some of the famous examples of Trademarks.

S. No.	Type of the Mark	Mark	Company/Firm
1.	Distinctive General Word	‘Apple’	IT Company
2.	Fanciful Designation	‘Kodak’	Photograph Film
3.	Distinctive Personal Names	‘Ford’	Automotive
4.	Device	‘Udhaar’	Financial Technology
5.	Number	‘4711’	Perfume
6.	Picture	Allegator	Knitwear Manufacturing
7.	Slogan	Drink it to believe it	Soft Drinks



- ***Prior Art Search*** - Prior to applying for Trademark registration, it is always prudent to check whether the intended Trademark is already registered or not. Also, it is ascertained whether the intended Trademark is not similar to the ones already registered. The requisite search can be carried out using various web portals, such as:
- *Public search for Trademarks by CGPDTM*
- *(<https://ipindiaservices.gov.in/tmrpublicsearch/frmmain.aspx>).*
- *WIPO's Global Brand Database (<https://www3.wipo.int/branddb/en/>).*
- *Trademark Electronic Search System (TESS) (<http://tmsearch.uspto.gov/bin/gate.exe?f=tess&state=4805:za847u.1.1>)*
- *MARKARIA Trademark Search Engine (<https://trademarksearch.marcaria.com/en/asia/india-trademark-search>).*
- *VAKIL Search (<https://vakilsearch.com/trademarksearch/trademarks?search=bajaj>).*



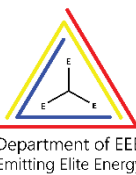
**Note: If decision of IPAB is in favour of applicant, procedure is followed for the registration of Trademark. As per notification of Delhi High Court (2021), IPAB is abolished and a dedicated IP Division has been created to deal with IPR issues.*

Fees for Trademarks Registration

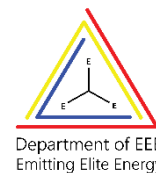
Entry No.	Contents	Amount (₹)		Form No.
		Physical Filing	E-filing	
1.	Where the applicant is an Individual / Start-up/Small Enterprise.	5,000	4,500	TM-A
	In all other cases.	10,000	9,000	
2.	Opposition/Application for Rectification of the Register/Counter statement / Refusal or invalidation of a Trademark.	3,000	2,700	TM-O
3.	For renewal of registration of a Trademark.	10,000	9,000	TM-R
4.	On application to register a subsequent proprietor in case of assignment or transfer for each Trademark.	10,000	9,000	TM-P
5.	Application for registration of Registered User/Variation of Registered User/Cancellation of Registered Users and Notice of intention to intervene in proceeding in cancellation/variation.	5,000	4,500	TM-U

6.	Request for search and issue of the certificate.	10,000	9,000	TM-C
7.	Application/Request for any miscellaneous function in respect of a Trademark Application/ Opposition/Rectification.	1000	9,000	TM-M
8.	On application for registration of a person as a Trademark agent.	5,000	4,500	TM-G

Source: <http://www.ipindia.nic.in/form-and-fees-tm.htm>

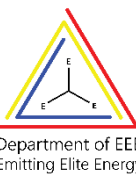


1. ***Can any correction be made in the application or register*** Yes, The rectifications are possible, but the applicant has to ensure that the corrections made in the Trademark do not alter its identity significantly.
2. ***Can a registered Trademark be removed from the register*** Yes, it can be removed if:
 - Trademark was registered without any bona fide intention of using it.
 - If the Trademark is not being used for a continuous period of 5 years from the registration date or 3 months prior to filing the application for registration.
 - Registered Trademark was disallowed but inadvertently existed in the official register.
3. ***Is the sound or smell registrable as a Trademark*** - Yes, sound or smell is registrable as a mark, as long as it is distinct and can be reproduced graphically. The Trademark, '4711 cologne' has been registered as a chemical formula. The sound can be registered as a Trademark, provided it can be recorded in MP3 format and depicted graphically.
4. ***Can a registered user restrain the third party from using an identical or similar mark which is not registered*** -
 - A registered user cannot restrain the third party from using identical or similar marks if the third party has been continuously using the mark concerning the same goods or services from a date prior to the date of use of the registered mark or date of registration.



The rules and regulations to file international applications in Convention countries are concluded under the following treaties and agreements administered by WIPO.

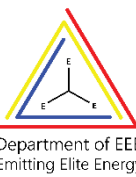
1. The **Madrid Agreement for International Registration** of Marks (1891) (wipo.int/treaties/en/registration/madrid/).
2. The **Nice Agreement for International Classification** of Goods and Services (1957). (<https://www.wipo.int/classifications/nice/en/index.html>).
3. The **Trademark Law Treaty** (TLT) (1994) (https://www.wipo.int/treaties/en/ip/tlt/summary_tlt.html).
4. **Vienna Agreement** (1973) for the Classification of Figurative Marks (<https://www.wipo.int/classifications/vienna/en/preface.html>).



- ‘**MAAZA**’, a popular mango fruit drink in India, is a registered Trademark of an Indian company, **Bisleri International Pvt. Ltd.**
- The company transferred the rights (formulation, IPR and goodwill, etc.) to a beverage company, **Coca-Cola**, for the Indian Territory.
- However, in 2008, the Bisleri Company applied for registration of Trademark ‘**Maaza**’ in Turkey and started exporting the product with the mark ‘**MAAZA**’. This was unacceptable to the Coca-Cola Company and thus filed a petition for permanent injunction and damages for passing-off and infringement of the Trademark.
- It was argued on behalf of Plaintiff (Coca-Cola Company) that as the mark ‘Maaza’ concerning the Indian market was assigned to Coca-Cola, and manufacture of the product with such mark, whether for sale in India or for export, would be considered as an infringement. After hearing both the parties, the court finally granted an interim injunction against the defendant (Bisleri) from using the Trademark MAAZA in India as well as for the export market, which was held to be an infringement of Trademark.



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Thank You