

Protecting the Shape-Shifting Identity: An Analytical Study of Fluid Trademarks under the Trademarks Act, 1999

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Abstract

The primary aim of trademark law is to reduce the effort customers need to expend when searching for products or services by linking a lasting image to their origins. Recently, fluid trademarks have emerged as a dynamic marketing instrument. These variations of registered trademarks exist alongside the original marks and are designed to enhance market demand and foster brand loyalty. Over time, companies strive to maintain relevance and sustain their broad appeal. In response to evolving global dynamics, fluid trademarks represent an effective means to stay contemporary and in tune with current trends. During the COVID-19 pandemic, numerous brands employed fluid trademarks to promote social distancing. McDonald's redesigned their iconic yellow 'M' against a red background. Audi spaced the wheels in their four-wheel logo farther apart during a certain period or for a specific purpose. The Starbucks mermaid and the Amul girl were depicted wearing masks over their faces. Protecting fluid trademarks under the Indian Trademarks Act, 1999, can present several challenges due to these marks' unique and adaptable nature.

The Trademarks Act, 1999 requires trademarks to be distinctive and capable of distinguishing the goods or services of one entity from those of others. With fluid trademarks that may change or evolve over time, maintaining the required level of distinctiveness can be challenging. When applying for trademark registration, the applicant needs to provide a clear and definitive representation of the mark. Fluid trademarks may not fit easily within the traditional confines of

a fixed representation, which can create difficulties during the registration process. If the variations of a fluid trademark are not managed carefully, there is a risk of consumer confusion. Consumers should still be able to associate the evolving mark with a particular source of goods or services. Fluid trademarks need to balance adaptability with consistency. It is essential to ensure that variations or adaptations of the mark do not dilute the distinctive character of the original mark, which could lead to potential objections during the registration process.

Section 15 of the Trademarks Act, 1999 provides for registering a series of trademarks. Although this provision is applicable when it is possible to foresee the various variants that will represent the trademark, it does not permit the conversion of a single trademark registration into a series trademark after the initial registration. Fluid trademarks offer ample creative freedom and flexibility in their design, but the ability to monopolize non-distinctive elements may not always be legally established. Demonstrating the likelihood of confusion requires a rigorous burden of proof. It will be intriguing to observe how Indian courts interpret trademark law principles in cases involving fluid trademarks in the coming time. Given the dynamic and adaptable nature of "fluid" trademarks, this paper argues that the current approach to series trademarks in India falls short of effectively accommodating the concept of fluid trademarks in terms of establishing the distinctiveness of the mark, the process of registration as a series mark and in respect of prevention of consumer confusion. The authors will examine the pertinent statutory provisions and regulations to assess the current extent of protection for fluid trademarks in India and recommend appropriate measures to address the associated challenges.

Keywords: Brands, Fluid Trademarks, Marketing Instrument, Series Marks, Trademarks Act, 1999

Introduction

The primary purpose of trademark law is to provide legal protection and recognition to distinctive marks used by businesses to identify and distinguish their goods or services from those of others. Trademarks help consumers identify the source or origin of a product or service. They act as a symbol of trust, quality, and consistency. When consumers see a familiar trademark, they have an expectation of the product's quality and attributes. Trademark law protects consumers from confusion and deception. It ensures that consumers can make informed choices by relying on trademarks to identify and select products or services that meet their expectations. Trademarks enable businesses to build and promote their brands. A strong and recognizable trademark can set a company apart from competitors and create brand loyalty. During the COVID-19 pandemic, some companies and organizations adapted their trademarks, branding, and marketing strategies to respond to the crisis and its associated challenges. The pandemic created an unprecedented and rapidly changing environment, with significant health and safety concerns. Brands recognized the need to adapt their messaging and branding to reflect their commitment to public health and safety. This adaptability led to modifications in trademark use. Many companies made temporary modifications to their logos and visual branding to incorporate elements such as facemasks, social

distancing icons, or supportive messages. Some brands use their trademarks to convey important public health messages. For instance, they used their logos to remind consumers of the importance of wearing masks, washing hands, or maintaining social distance.

The COVID-19 pandemic has brought about significant changes across all aspects of life, revealing how the world responds to the crisis. No industry or business has been left untouched by its impact. Amid these unprecedented times, it has reshaped how organizations portray themselves in the fight against the virus and raise awareness about its challenges. A particularly intriguing development in branding and advertising during this period is the emergence of "fluid trademarks." Fluid trademarks encompass a strategy for capturing multiple variations of a trademark that are closely related to one another. The goal is to design these trademark versions in a way that maintains their association with the same source or brand. Fluid trademarks offer a versatile approach for building brand identity and increasing brand recognition. A well-known example of fluid trademarks in India is the iconic Amul Girl. This character is used in cartoons to promote the brand while offering visual commentary on contemporary political and social issues. On a global scale, Google, as a renowned internet giant, frequently adapts its homepage with Google Doodles to commemorate significant events. (Saxena, 2021) More recently, the COVID-19 pandemic has spurred the use of fluid trademarks, with several recognizable brands making adjustments to their logos. For instance, McDonald's reimagined its iconic yellow 'M' against a red background, Audi increased the spacing between the four rings in its logo, BMW incorporated a message about maintaining distance in its logo, and Starbucks depicted its mermaid logo wearing a face mask. Even Nike's famous swoosh added a twist with the phrase "Just Don't Do It" (Rai, 2020). These creative adaptations respond to the global sentiment surrounding COVID-19. However, while companies may strive to be inventive in redesigning their logos in response to the pandemic, they may encounter challenges in securing the necessary intellectual property protection for these new logo variations.

Research Questions

This research paper intends to address the following research questions:

Can the protection accorded to a registered trademark be extended to a fluid trademark under the Trademarks Act of 1999?

Does the use of fluid trademarks lead to 'likelihood of confusion' amongst consumers?

Research Objectives

The research objectives of this study are two-fold:

To critically analyze the provisions of the Trademarks Act to determine whether fluid trademarks can be extended protection under the Act

To analyze the decisions with respect to the 'likelihood of confusion amongst consumers' and to determine the same in the context of the use of fluid trademarks.

Research Methodology

In view of the objective of the research paper, the research methodology adopted in the study is doctrinal in nature. The primary source consists of the relevant statutory provisions under the Trademarks Act of 1999 as well as the pertinent judicial pronouncements of the national courts and foreign courts of law. The secondary sources referred to here in the paper are different articles appearing in the internet as well as commentaries written by various authors on the law of trademarks. Since the primary sources of this paper are both statutory laws and judicial precedents, the nature of the data is qualitative in nature. As

the primary objective of this research is to critically analyze the provisions of the Trademarks Act of 1999 to determine whether fluid trademarks can be extended protection under the Act, content analysis of the relevant laws have been made in this paper.

Registration of Fluid Trademarks in India

A trademark serves to identify the source of products or services. It is commonly acknowledged that for both the trade and the public to associate a specific symbol with a source, it must be consistently applied in connection with a particular product or service. Traditionally, a trademark gains more strength as it is consistently used over an extended duration because this usage enables the public to identify it as a symbol representing a source. Trademark rights are ongoing and have no set expiration date. Utilizing consistent elements like a particular colour scheme or style of presentation further fortifies these rights through their prolonged and consistent use.

The concept of "fluid trademarks" refers to a dynamic and adaptable approach to trademarks and branding that can evolve and adapt to changing market conditions, consumer preferences, and communication channels. A fluid trademark strategy allows companies to effectively leverage their trademarks as versatile marketing assets. These variants of registered trademarks exist alongside the original marks and serve to stimulate market interest and foster brand loyalty. They can be legally registered as a series of marks, where multiple trademarks are registered for the same or similar products or services. While they share fundamental characteristics, they may diverge in non-essential elements, such as ornamental alterations that do not significantly impact their overall identity. It is crucial for brand owners to be mindful of potential risks associated with these practices.

Employing fluid marks can be a risky endeavor as each alteration in the logo can lead to a departure from the original trademark's brand identity. This risk is particularly pronounced for lesser-known brands as the use of fluid marks may confuse consumers regarding the brand's core trademark. Moreover, excessive use of fluid trademarks carries the potential to dilute the strength of the trademark. However, this is not a universal truth. When used judiciously, fluid trademarks can serve to enhance brand recognition and educate consumers about the dynamic nature of the brand, contributing to its goodwill. It is important to note that if the owner of a trademark has not sought protection for its variants, they may not be able to claim infringement if a third party uses signs related to these variants. Protection is typically granted solely to the registered underlying mark in such cases. Nonetheless, the owner can seek legal recourse by pursuing cases against identical variants or by alleging violations of copyright related to the creative elements within the variant. When transitioning to the use of fluid trademarks, brands must meticulously plan their strategy (Assaf, 2010). They need to make informed decisions regarding whether to register fluid trademarks and the extent to which they can effectively monitor these fluid trademarks. In the event of a trademark application, the claimant would need to comprehensively describe each of the various trademark variants to accurately capture the essence of a fluid mark.

Certain provisions exist to grant necessary protection to fluid trademarks. For example, under Section 15 of the Trade Marks Act, of 1999, fluid trademarks can be safeguarded by registering them as a series. In this scenario, while the core elements remain consistent, non-essential ornamental modifications that do not significantly alter the fundamental identity of the trademark can vary. Section 15 of the Trade Marks Act, of 1999, deals with the "Registration of parts of trademarks and trademarks as a series." If the owner of a trademark asserts the right to exclusive use of a specific part of it independently, they can apply to register both the complete trademark and the separate part as distinct trademarks. Each of these separate trademarks is subject to all the requirements and carries all the attributes of a standalone trademark.

Furthermore, if an individual who claims ownership of several trademarks for the same or similar goods, which, although sharing fundamental characteristics, differ in non-distinctive elements like the description of goods or services, pricing, quality, place names, or other non-material factors that do not significantly affect the trademark's core identity, they can apply to register these trademarks as a series under a single registration (Rai, 2020).

The concept behind Section 15, as elucidated in the draft Manual of Trademarks 2015, relates to individuals who claim ownership of multiple trademarks for the same goods or services that share substantial similarities in their core characteristics. However, these trademarks may differ in elements of a non-distinctive nature that do not significantly alter the fundamental identity of the trademark. While this explanation aligns with the idea of fluid trademarks to some extent, the dynamic nature of fluid marks doesn't necessarily prompt brand owners to prioritize their registration. Section 15 is effective when it's possible to anticipate the variants that will be used to represent the trademark. Naturally, unforeseen events like the severe impact of the Covid-19 pandemic could not have been predicted (Rai, 2020). Over time, companies adapt to stay relevant and maintain their broad appeal. To respond to global changes effectively, fluid trademarks offer a valuable means of remaining contemporary. However, it's important to note that Section 15 does not permit the conversion of a trademark application into a series trademark after the registration of a single trademark has occurred. The term "fluid" implies a dynamic quality, which is not fully accommodated by Section 15. Therefore, it can be challenging to assert that the current Indian position on series trademarks adequately addresses the concept of fluid trademarks. In the United States, the Trademark Manual of Examining Procedure establishes specific criteria. It states that any modified mark should retain the essence of the original mark, and the new form should convey the impression of essentially being the same mark. To determine if an alteration is substantial, a general test is applied: whether the mark would need to be republished after the alteration to accurately represent the mark for opposition purposes. If the modified mark is distinct enough from the original to necessitate republication, it would be considered as a new mark suitable for a new trademark application.

Protection of Fluid Trademarks as 'Series Trademarks' in India: Issues and Challenges

A trademark series or family of marks is a collection of related trademarks designed to have a specific distinctive element serve as a key identifier for the relevant public. This approach allows for certain elements of a mark to be granted a heightened level of protection by consolidating them within a single application. By registering multiple marks that share a common element, a brand can secure exclusive rights over these variations, ultimately enhancing their distinctiveness through prior usage. In a series application, several marks are included that are fundamentally the same, and any minor distinctions between them are negligible. For instance, the same word mark might be presented in italics, in capital letters, and in standard lowercase lettering. McDonald's, for example, has established a series of 'Mc' word marks. These include various trademarks like 'McDonald's,' 'McDonald's Hamburgers,' 'Egg McMuffin,' 'McChicken,' 'McDonuts,' 'Big Mac,' 'McPizza,' 'McCafe,' 'Chicken McNuggets,' 'McDouble,' 'Chicken McBites,' and numerous others within the McDonald's brand family. (Selvam, 2013)

The determination of the existence of a series of marks hinges on factual considerations related to the distinctiveness of the common element, promotional efforts, advertising strategies, usage within the family of marks, and their incorporation into everyday sales activities. In the fashion industry, this is aimed at creating a shared public image and, in turn, recognition of common ownership based on the presence of a shared element in each mark. The key requirement is that the fundamental identity of the marks remains largely unaffected by the variations between them. The essential feature shared by all members of a trademark family is that each of them contains a common element, which could be a word, syllable,

prefix, suffix, or another characteristic that signifies their membership in that particular family of marks. In the words of McCarthy, "A trademark owner has the option to utilize multiple marks that share a common prefix, suffix, or syllable. This allows the owner to establish a family of marks, all of which bear a common 'surname.' Consequently, this serves as the basis for arguing that a defendant's mark, which includes the 'family surname,' is likely to be confused with the entire 'family group' of marks." In essence, this family 'surname' or distinguishing element is recognized by consumers as a distinctive trademark in its own right when it appears as part of a composite mark (Gondane, 2021).

Consumer perception of trademark series is contingent upon the assumption that the public views these marks as part of a larger family of marks (Cummings, 2015; Dhar, 2015; Welch, 2015). This relies on the understanding that the shared element within the marks in question, through its usage, possesses the essential distinctiveness required to serve as the primary indicator of a product line in the eyes of the relevant consumer community. Additionally, it presupposes that the concerned public recognizes the common component of these marks as originating from a single entity. This recognition by the public can only be established by providing evidence of the use of the family of trademarks. The protection of series marks, while beneficial for brand owners, can also present various challenges and legal issues. Here are some of the key issues related to the protection of series marks:

Distinctiveness: To register a series of marks, they must share a common element that serves as a source identifier. Ensuring that this common element is distinctive and capable of distinguishing the goods or services from others can be a challenge.

Potential for Confusion: If the variations within a series are not carefully managed, there is a risk of consumer confusion. The registered variations should be sufficiently distinct to avoid confusion, but this can be subjective and may vary by jurisdiction.

Maintaining Consistency: Over time, brand owners must ensure that the variations within the series are used consistently. If a variation becomes too different from the core mark, it may no longer qualify for protection as part of the series.

Costs: Registering and maintaining a series of marks can involve additional costs compared to a single trademark registration. Each variation may require separate registration fees and maintenance fees.

Defending Against Infringement: Enforcing rights against potential infringers can be complex, as it depends on the specific variations registered. Some variations may be more susceptible to infringement than others.

Licensing and Assignment: If brand owners wish to license or assign their trademarks, it can be more complex with a series of marks, as the terms of use and licensing agreements must be clearly defined for each variation.

Fluid Trademarks and Protection of Consumer Interests from 'Likelihood of Confusion'

The fundamental objective of trademark law is to safeguard the interests of consumers. It prohibits companies from capitalizing on the brand loyalty of a well-known company by adopting a trademark that closely resembles it. In essence, consumers seek assurance about the quality of goods or services provided by the trademark owner. Therefore, the primary functions of a trademark are to indicate that a product meets expected standards and to encourage repeat purchases by the consuming public. In essence, a trademark serves as a tool that aids consumers in distinguishing the products of one manufacturer from a sea of similar products in the market, thus "establishing a connection in the course of trade." This, in turn, minimizes the search efforts on the part of consumers as they seek to find a high-quality product. With this goal in mind, the critical question when evaluating whether fluid trademarks should receive legal protection ultimately boils down to whether they serve the consumer's best interests (Lukose, 2013).

Fluid trademarks can potentially lead to a likelihood of confusion among consumers if not used or managed carefully. The likelihood of confusion is a key concept in trademark law, and it occurs when consumers are likely to be confused about the source of a product or service due to the similarity between two or more trademarks. The primary risk with fluid trademarks is that they can create inconsistency in brand identity (Sahoo, 2020). When different versions of a trademark are used, especially if they vary significantly in appearance, it may be challenging for consumers to recognize and associate all of them with the same source. This lack of uniformity can lead to confusion. Consumers often rely on trademarks to make informed choices. When a brand uses multiple fluid trademarks, consumers might not know what to expect from the product or service, which can lead to confusion and uncertainty. Fluid trademarks may include elements that are not distinctive or unique, making it difficult for consumers to distinguish between different brands. This can contribute to confusion, especially when other elements of the trademark are similar (Cummings, 2015; Dhar, 2015; Welch, 2015). Fluid trademarks, by design, can be similar but also different from each other. This similarity-difference combination can be confusing, as consumers may not be sure if the differences indicate a new source or if it's a variation of the same brand. Fluid trademarks can challenge consumers' memory recall. If they see different versions of a trademark in various contexts, they may have difficulty remembering and recognizing the brand consistently. If multiple brands in the same market segment use fluid trademarks, the chances of consumer confusion increase. When various companies have similar-looking but different fluid trademarks, consumers may struggle to distinguish one from another.

Glaxo Group Limited v. Union of India, Voltas Limited, and Others [Delhi High Court, 2010]

The case of Glaxo Group Limited v. Union of India, Voltas Limited, and Others revolved around an appeal challenging the decision of the Intellectual Property Appellate Board. In this case, the petitioner sought to register the trademark "Volmax" in Class 5 of Schedule I of the Trade Mark Act 1999. The respondent, Voltas Limited, demonstrated that it had been using a family of marks that shared the common element "Vol," such as Voltas, Volfruit, Volfarm, Volpump, Voldrill, Volita, Voltrion, Voldrum, Vollam, Volram, Volbit, Vol-Seafood, Volfan, and Volphor. The Assistant Registrar concluded that granting registration to the disputed trademark, considering the series of trademarks owned by the opponents with the common prefix "VOL," would likely confuse or deceive customers who were already familiar with the opponent's trademarks bearing the "VOL" prefix. The Delhi High Court observed that the IPAB's order did not seem to have conducted a comprehensive assessment of the two competing marks. As a result, the High Court set aside the IPAB's order and directed the tribunal to reevaluate the matter. While the case does not explicitly use the term "fluid trademarks," it highlights the importance of considering the potential for confusion and deception when dealing with a series of marks that exhibit variations around a common theme or prefix. It's crucial to maintain the distinctiveness of each mark within the series while also allowing for creativity and adaptation.

Modi-Mundipharma Pvt. Limited vs. Preet International Pvt. Ltd. [Delhi High Court, 2009]

The case of Modi-Mundipharma Pvt. Limited vs. Preet International Pvt. Ltd. and others is an important legal precedent that involves trademark infringement and passing off claims, specifically related to a series of trademarks with a common suffix "Cotin." The plaintiff, Modi-Mundipharma Pvt. Limited, held registered trademarks in a series that featured the common suffix "Cotin." One of their registered trademarks was "Fecotin." The defendant, Preet International Pvt. Ltd., was using the trademark "Femicotin" for a product that fell within the same class of goods governed by the Trademarks Act as the plaintiff's "Fecotin" product. The plaintiff alleged that the defendant's use of the trademark "Femicotin" amounted to trademark infringement and passing off. The central issue in this case was whether the defendant's use of "Femicotin" was deceptively similar to the plaintiff's "Fecotin" and whether it was an

attempt to pass off the defendant's product as the plaintiff's. The Delhi High Court ruled in favour of the plaintiff. It held that the defendant's use of "Femicotin" was deceptively similar to the plaintiff's "Fecotin" and constituted an attempt to pass off the defendant's product as that of the plaintiff. The Court acknowledged that the plaintiff had a series of trademarks with the common suffix "Cotin." This acknowledgement is crucial because it recognizes the concept of a trademark series, where a family of trademarks shares a common element, in this case, "Cotin" as a suffix. The Court's decision effectively restrained the defendant from using the trademark "Femicotin" for its product, as it would likely lead to consumer confusion and mislead the public into believing that it was associated with the plaintiff's products. This case is significant in the present context as it recognizes and protects a series of trademarks, emphasizing the importance of safeguarding the distinctiveness of trademarks within the series. It upholds the principles of trademark law aimed at preventing confusion among consumers and protecting the rights of trademark owners.

Louis Vuitton Malletier vs. Dooney Burke. Louis Vuitton Malletier [United States Court of Appeals, Second Circuit, 2006]

When we consider the enforcement of fluid marks, an excellent example is that of Louis Vuitton Malletier vs. Dooney Burke. Louis Vuitton Malletier is a well-known French luxury fashion brand renowned for its high-end fashion and leather goods, particularly its iconic LV monogram pattern. The brand is known for its commitment to protecting its trademarks and brand identity. Dooney & Burke, Inc. is an American fashion company specializing in handbags and accessories. In *Louis Vuitton Malletier v. Dooney & Burke, Inc.*, the plaintiff accused the defendant of imitating a stylized version of their iconic toile monogram, which featured the LV initials, on their products. Louis Vuitton had transformed their original trademark into a multicolored version set against a white background. The Court, in its assessment of the case, emphasized the need to evaluate the likelihood of consumer confusion not through a direct side-by-side comparison of the marks but by considering their similarity within the context of the marketplace. As a result, the Court decided to send the case back to the lower court for a more detailed examination of whether there was a likelihood of confusion between the two marks.

This case emphasizes the importance of maintaining the distinctiveness of a brand's identity through the consistent use of trademarks. In the fashion industry, where brand recognition is crucial, the case underscores the significance of trademarks in establishing and protecting brand identity. The case illustrates the brand's proactive approach to protecting its intellectual property rights, particularly in a highly competitive industry like fashion. It showcases the brand's commitment to safeguarding its unique LV monogram pattern from potential infringement or dilution by other fashion companies. While the case doesn't explicitly use the term "fluid trademarks," it indirectly touches on the concept. In the fashion industry, brands often adapt their trademarks for special events, collaborations, or to convey specific messages. For example, Louis Vuitton may make temporary changes to its monogram pattern for limited-edition products or to raise awareness about social issues. The case demonstrates the need to balance adaptability while maintaining a recognizable brand identity.

Analysis and discussion on the issues related to protection of fluid trademarks in India

The notion of fluid trademarks is relatively recent and has not yet been subjected to scrutiny by the Indian courts. However, it is expected that a rights holder may face challenges in contesting third-party usage of a mark that resembles its own if their branding is characterized by frequent and rapid alterations, and there is no established pattern of consistent use for variant marks (Bakhru, 2013). As a result, rights holders should be ready to tolerate the use of similar representations if they have not consistently

employed variations or have only done so on an ad hoc basis. Fluid trademarks present significant enforcement challenges because they deviate from their registered form, potentially making them susceptible to non-use cancellation proceedings. This poses the risk of consumer confusion, as arbitrary variations may create uncertainty about the authenticity of goods or services – whether they originate from the original brand or are mere imitations. All efforts to establish a connection between consumers and the brand can be in vain if consumers cannot recognize the core mark. The excessive and random alterations of the mark may dilute the value of the original mark (Viscounty, 2021; Hazlehurst, 2021).

As this is a novel concept, there are no established laws for protecting fluid trademarks. Consequently, if a rights holder introduces new variations in a way that they fail to use the underlying mark consistently, the mark may be deemed abandoned, and non-use of the trademark could lead to its cancellation based on abandonment, despite holding a registration. Another issue arises when the trademark owner has not sought trademark protection for its variants. In such cases, they cannot claim infringement if a third party uses signs that correspond to these variants. The protection is limited to the registered underlying mark. However, the owner can seek redress through a passing-off action against similar variants or by pursuing a claim of copyright infringement related to the artistic elements used in the variant. Despite the growing popularity of fluid trademarks, it's vital to keep the primary function of trademarks in mind – facilitating customer identification of their preferred brands (Sahoo, 2020). Customer loyalty is a result of consistent use of the same trademark over many years, if not decades. In contrast, fluid trademarks deviate from this idea, potentially undermining a brand's customer base. It is the original trademark that truly retains customers, while fluid trademarks may offer temporary entertainment. Consequently, it is only the original, static trademark that warrants legal protection. Fluid trademarks can be seen as indulgences, not necessities, affordable primarily to brands with well-established trademarks. Essentially, fluid trademarks rely on the familiarity and reputation associated with the original trademark. Without the original trademark, a fluid trademark lacks market value for customers. Therefore, while creative as a marketing tool, fluid trademarks do not inherently demand legal protection.

Conclusion

The legal framework in India did not provide specific guidance on the protection of fluid trademarks. The lack of clear regulations or guidelines left room for uncertainty in how these marks would be protected and enforced. Establishing the distinctiveness and identity of fluid trademarks within the legal framework was challenging. It was unclear how courts would assess the similarity or distinctiveness of fluid trademarks in comparison to their static counterparts. The need for proper record-keeping and documentation to demonstrate the evolution and usage of fluid trademarks was essential. In some cases, fluid trademarks could be considered a series of marks with a common element. Clarifying the criteria and process for establishing such a series, and the legal implications of doing so, is an issue. The potential for consumer confusion regarding fluid trademarks and their changing nature was an unsolved issue. Courts needed to address how to protect consumers from confusion and ensure that they could still identify the source of goods and services accurately. The scope of protection for fluid trademarks compared to traditional static trademarks is unclear. It is uncertain whether courts would extend the same level of protection to fluid trademarks as to their static counterparts.

Scope for further study

Fluid trademarks could involve changes in various forms, including digital media and physical products. Determining how to enforce protection consistently across different media and product lines is a challenge. Understanding how the public perceives and identifies fluid trademarks compared to static

trademarks required further exploration. The role of public perception in the protection of fluid marks is an issue, required to be addressed in future studies.

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