

Trademark Bullying: A Case Against Excessive Trademark Enforcement

INTRODUCTION

Trademark bullying refers to the aggressive and often unjustified enforcement of trademark rights by resource-rich entities against smaller businesses, leveraging their financial and legal power to intimidate or suppress competition. While trademark law in India is governed under the Trade Marks Act, 1999 and is designed to protect brand identity and at the same time prevent consumer confusion, some entities exploit legal provisions to assert exaggerated or baseless claims. This practice undermines the legislative intent of fostering fair competition and protecting honest users, as outlined in Section 142 of the Act, which safeguards against groundless threats of legal action. In India's rapidly globalizing economy, trademark bullying has emerged as a significant concern, driven by robust enforcement strategies that erode protections for smaller entity.

LEGAL FRAMEWORK

The **Trade Marks Act, 1999** provides a comprehensive framework for trademark registration, protection, and enforcement. **Section 28** grants registered trademark owners' exclusive rights to use their marks, while **Section 29** outlines remedies for infringement, such as unauthorized use causing consumer confusion or dilution of a mark's distinctiveness. However, the aggressive enforcement tactics adopted by well-resourced companies, such as monitoring trademark applications, domain name filings, and search engines for potential infringement, have transformed these protections into tools for overreach.

Entities with established trademarks often deploy extensive resources to monitor and challenge any perceived similarity, even when the use is independent or in good faith. This approach frequently disregards **Section 142**, which aims to protect individuals from groundless threats of legal proceedings. By initiating cease-and-desist notices, opposition proceedings, or infringement suits, these entities create a chilling effect, discouraging smaller businesses from defending their rights due to the high costs of litigation.

CONSEQUENCES OF TRADEMARK BULLYING

The aggressive enforcement of trademark rights has far-reaching implications:

- a. **Harm to Consumers:** When smaller businesses are forced to rebrand or cease operations, consumers lose access to diverse products and services. The monopolization of common terms or symbols restricts market choices.
- b. **Undermining Legislative Intent:** The misuse of trademark law to bully smaller entities contradicts the purpose of the **Trade Marks Act, 1999**, which is to promote fair competition and protect consumers from confusion, not to enable monopolistic control over generic terms.
- c. **Impact on Small Businesses:** The threat of expensive litigation discourages innovation and entrepreneurship, as small businesses are often compelled to abandon their branding or shut down entirely. This creates an uneven playing field, favoring resource-rich entities.

ENFORCEMENT LANDSCAPE

Large corporations today use a combination of tools to monitor and enforce their trademarks, ranging from automated alerts on trademark filings to domain name surveillance and extensive legal



monitoring of digital marketplaces. In theory, these are legitimate efforts to protect a brand. In practice, however, many such entities cast their nets far too wide, treating any mark that sounds, looks, or feels remotely similar as a threat.

These aggressive strategies are often deployed not just to stop actual infringement but to eliminate any potential presence of similar branding. Even when it is clear that the competing mark is being used in good faith, in a completely unrelated context, or by a business with no intention of capitalizing on the original mark's goodwill.

Several cases in India highlight the issue of trademark bullying and the judiciary's response to it:

1. ***Monster Energy Company vs. S.K. Bikes Pvt. Ltd.***

In this case, *Monster Energy* targeted the mark "Li'l Monster" registered in class 12, even though their own goods belong to different classes. The aggressive pursuit and successful rectification reveal how trademark rights are sometimes extended far beyond their intended scope.

2. ***Red Bull GmbH's Aggressive Enforcement***

Red Bull's enforcement frequently includes opposition or legal action against any entity using the word "Bull" or bull like image even when the products or industries are different. Though arguably within legal rights, such actions often deviate into territory of over-enforcement.

3. ***Subway vs. Suberb***

This landmark case signaled judicial restraint on dictatorial enforcement. The **Hon'ble Delhi High Court** ruled that no consumer would confuse Subway with Suberb, emphasizing that infringement claims must consider consumer perception and market context, not just visual or phonetic similarity.

4. ***Institute of Directors vs. Director's Institute***

In this case, the **Hon'ble Delhi High Court** held that commonly used English words or non-distinctive combinations cannot be monopolized. It cautioned that registering such marks comes with the risk of others using similar terms, reinforcing the principle that trademark law should not stifle legitimate competition.

CONCLUSION

Trademark bullying, driven by the aggressive enforcement strategies of well-resourced entities, poses a growing challenge in India's intellectual property landscape. While **Section 28** of the **Trade Marks Act, 1999** grants exclusive rights to trademark owners, its transformation into monopolistic control undermines the protections offered by **Section 142** for honest users. As India's economy expands and businesses prioritize intellectual property protection, there is an urgent need for greater awareness of trademark bullying and reforms to prevent the misuse of trademark law. Strengthening judicial oversight, lowering barriers for smaller businesses to contest frivolous claims and promoting fair competition are critical steps toward ensuring that trademark enforcement does not stifle innovation or harm consumers.