

Role of Intellectual Property Rights in Building Alcohol Brand Identity in India

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Abstract- The alcohol industry in India has experienced rapid growth in the last few decades, becoming one of the significant economic sectors contributing towards state revenue generation and employment. Changing life styles, urbanization, globalization, and increased discretionary income have resulted in a shift in consumption patterns in the industry. There is now stiff competition in the market among domestic and foreign alcohol companies seeking to capture consumer mindshare. However, unlike other industries, there are stringent limitations on marketing and advertising imposed by law in the alcohol industry. This poses a challenging problem for alcohol firms in developing effective branding strategies without engaging in advertisements. Intellectual Property Rights (IPR) come in handy in such circumstances. Brands are established through trademark registrations, logos, product designs, bottle shape designs, corporate jingles, and trade dress among others. These rights help alcohol firms distinguish themselves from other competitors and protect their good reputation. Furthermore, they enable customers to purchase authentic goods. This research paper explores the role of intellectual property rights in establishing alcohol brand identity in India. Among the aspects covered are trademark legislation, packaging and trade dress considerations, surrogate marketing, digital marketing methods, and court protection of alcohol brands. It is therefore safe to say that intellectual property rights have now gone beyond being mere legal rights. They have been developed into tools that affect the perception of consumers and market competition within the Indian alcoholic beverages industry.

I. INTRODUCTION

It should be noted that the alcoholic beverages industry in India can be seen as an industry that is quite interesting because of its profitability as well as controversy. The alcohol beverages industry brings a lot of profit to the country since there are huge taxations collected. At the same time, the alcohol beverages industry is notorious because it causes a lot of different problems such as health complications, alcohol abuse, domestic violence, etc. Hence, the

alcohol beverages industry in India can be seen as a strictly controlled industry.

According to Article 47 of the Indian constitution, it is the responsibility of the government to ensure that there is no consumption of alcohol that does not provide medicinal value to the person since it brings about different health risks. Even though there is no prohibition in some states, prohibition played a key role in alcohol policies in India.

Unlike other products, the advertisements of alcoholic beverages are not allowed on different platforms such as on the television, radio stations, and other media platforms. This is because the objective is to discourage the consumer from consuming this product, mainly the youth.

However, in business, being visible to consumers means everything. Failure to advertise means missing out on getting noticed by consumers. This is the reason why alcohol companies have to rely so much on brand identity. The concept of brand identity is much more than just naming products. Brand identity refers to the reputation, the image, the value, and the emotions that come with a product. Consumers usually connect alcohol brands with concepts like luxury, celebrations, masculine, elegance, friendship, success, among others.

In many instances, the purchase of alcohol means not just purchasing something to drink, but also gaining social status. That's the main role played by branding.

II. CONCEPT OF INTELLECTUAL PROPERTY RIGHTS

Intellectual Property Rights refer to legal rights used for protecting inventions of human intellect. Intellectual property rights enable a creator to have some level of control over his creation.¹

The various types of intellectual property include the following:

- Trademark Act
- Copy Right
- Patent
- Industrial Design
- Trade Secrets
- Geographical Indication

Among all, trademarks remain very crucial within the alcohol industry. A trademark is either a word, logo, label, symbol, or combination of shapes and colors used to distinguish products.²

For instance, consumers may recognize a specific brand of whiskey just by looking at the shape of the bottle despite not seeing any label on it. This alone gives great commercial value to the product. Another key element is trade dress. Trade dress refers to a look and packaging of the goods such as bottles, colours, shapes, and arrangement of labels on them.

Since the bottle itself becomes a mode of promotion, many alcohol brands prefer distinct packaging of their bottles.

Moreover, copyright protects artistic labels while industrial design may also be considered in protecting bottle designs.

Importance of IPRs within branding of alcoholic drinks is seen in the following aspects:

- a) It prevents duplication of products by rivals.
- b) It enhances goodwill of the business.
- c) It develops customer trust
- d) It makes the product financially valuable.

III. EVOLUTION OF THE ALCOHOL INDUSTRY IN INDIA

The history of alcohol consumption is deep-rooted in Indian culture and society. In ancient India, traditional drinks such as toddy, arrack, etc., prevailed in huge numbers.

But post-liberalization after 1991, the scenario changed dramatically. There is extensive involvement of foreign companies apart from multinational firms in India.

These days, there are drinks like:

- Indian made Foreign Liquor (IMFL)
- Beer
- Wine
- Vodka
- Rum
- Gin
- Spirits

Consumers have started giving importance to branding and experience along with consumption. Earlier, price was always an essential factor.

Premium drinks have gained popularity these days. Consumers are ready to pay for the superior quality available in brand names.

From the economic perspective, these drinks hold significance in India. They contribute to the income and employment levels in huge numbers. From agriculture to manufacture till the hospitality sector, the chain goes on and on.

While alcohol holds economic significance, its political sensitivity cannot be ignored. That is the reason why legislation regarding alcohol is strictly followed in India.

Thus, competitive advantage lies with the one who succeeds through branding.

IV. TRADEMARKS AND ALCOHOL BRANDING

The most appropriate tool that can be applied by the alcohol industry is the trademark. Under Indian law, the Trademarks Act, 1999 protects trademarks.

A trademark gives the exclusivity right either to the brand name or the logo.

For example, in the case of the alcohol industry, the exclusivity right is important in building the loyalty⁴ of consumers to the particular brand.

When a consumer visits the liquor store, he or she picks up the brand due to its trustworthiness. Trustworthiness builds during many years of supplying the customers with high-quality products.

There could be emotional connections between the brand of alcohol and its consumers.

For example:

- The brand of whiskey may be sophisticated,
- The brand of beer is friendly and fun-loving,
- The brand of wine is elegant.

All these factors contribute to successful promotion of the brand. Benefits of trademark registration include:

- The protection of other brands,
- The exclusivity,
- The prevention of misleading the consumer,
- Increased value, and
- Licensing.

Registration of the trademark could make it the most valuable asset of the company. Sometimes, it becomes more valuable than production of the goods.

V. TRADE DRESS AND PACKAGING AS SILENT ADVERTISING

Package is a very strong weapon used in the promotion of alcohol beverages.

Since advertisements are prohibited, trade dress emerges as the only medium of brand communication. The elements included in trade dress are:

- Shape of the bottle
- Placement of the label
- Typography
- Pattern of colour
- Caps and seals

Identification of brands is often done visually. A distinctive bottle is an instant identifier. Luxury brands

are packaged using heavy glass bottles, embossed labels, and metallic effects. All these affect consumers purchasing decisions.

The consumers believe that good packaging is indicative of high-quality products.

Trade dress also ensures visibility. When the bottle of a particular brand is presented at gatherings such as parties or restaurants, it acts as an advertisement without words.

In this way, trade dress acts like silent advertising⁵. India's courts have upheld the concept of trade dress under the passing off act. In cases where trade dress is copied and causes confusion, legal action may be taken against the competitor. This makes trade dress a valuable commodity both legally and commercially.

VI. SURROGATE ADVERTISING IN INDIA

One of the most unique advertising methods employed by alcohol advertisers is surrogate advertising⁶.

This is because of the ban placed on the direct advertisement of alcohol brands. Consequently, these alcohol advertisers promote other items using the same brand name. These include:

- Soda water
- Mineral water
- Club soda
- Glassware
- Event sponsorship

However, the purpose behind such advertising is not to sell these items; rather, it is for brand recall.

When consumers view advertisements of such products, they instantly associate it with alcohol. Thus, it helps keep the alcohol brand in the minds of the consumers. This is made easier through the use of trademark rights.

A whiskey brand can sponsor a soda product bearing its trademark. Event sponsorship through sports sponsorship is another common surrogate advertising strategy employed by alcohol brands. Such sponsors

include cricket leagues, music festivals, and nightlife events.

The alcohol brands offer a lot of lifestyle connections. But then again, surrogate advertising remains controversial, too. It promotes indirect consumption of alcohol. However, it still remains commercially successful.

VII. DIGITAL BRANDING AND SOCIAL MEDIA

The rise in technology has transformed the way that brands market themselves.

For example, alcohol brands heavily utilise social media marketing⁷ strategies. This can be achieved through platforms like Instagram, Facebook, and even YouTube. Instead of directly advertising alcohol, the company will advertise lifestyles.

These lifestyles will involve aspects like:

- Vacationing
- Music
- Latest fashion
- Parties
- Birthdays

Such advertisements generate an emotional link between the product and the consumer. Brands utilise influencer marketing⁸ where celebrities subtly advertise their products.

Aspirational branding is also a result of this technique. Digital marketing strategies are effective due to their appeal to youth. They also help brands engage more with their consumers.

Nevertheless, there are legal risks associated with digital branding. The creation of fake social media pages can damage brand's image. Online infringement has made trademark protection extremely vital. Businesses must police their digital presence.

VIII. COUNTERFEITING AND BRAND PROTECTION

Counterfeiting is a major challenge for the Indian alcohol sector. Counterfeits create problems for organizations and customers.

Counterfeiters replicate:

- Brands
- Labeling
- Logos
- Bottle design This leads to deception.

Customers might purchase counterfeit liquor without knowing. It can be dangerous because the counterfeit liquor could contain harmful elements. There have been numerous instances in India where counterfeit liquor has resulted in fatalities. Therefore, brand protection is not only a commercial concern but also a matter of consumer protection.

The Trademarks Act, 1999, offers legal recourse to trademark infringements. Civil remedies include injunctions and compensation. Penalties and jail time are criminal remedies.

Apart from legislation, companies employ counterfeiting prevention technology, such as:

- Quick response codes
- Hologram stickers
- Barcodes
- Security stickers

Such methods enable customers to validate product authenticity.

Despite technological advancement, counterfeit markets are challenging to regulate due to poor implementation and huge underground networks.

IX. ROLE OF INDIAN COURTS IN PROTECTING ALCOHOL BRANDS

Indian Courts have been quite instrumental in safeguarding brand identity. Trademark legislation is dependent on judicial intervention. The courts

safeguard business interests against any infringement or passing off.

An essential factor that the courts consider is that of consumer confusion. Should a similar trademark or packaging induce confusion among consumers, then it is restrained from use.

Khoday Distilleries Ltd. vs. Scotch Whisky Association⁹ is one of such cases where the court considered geographical identity in the branding of alcoholic beverages. These cases bring out the importance of market reputation. United Breweries Ltd. vs. Som Distilleries¹⁰ was another instance where the courts looked at issues pertaining to brand similarity and unfair competition.

Thus, courts consider goodwill an essential element. There is yet another set of trade dress cases. Courts consider the total impression of packaging. Though names are different, similar packaging may lead to unfair competition. Such judicial protection ensures innovation due to secure investments in branding.

X. GLOBALIZATION AND INTERNATIONAL COMPETITION

Globalisation has transformed the alcohol market. International brands have entered the Indian market and intensified competition. Consumers can enjoy foreign whiskey, wine, and vodka. Intellectual property rights have become even more important. India-based brands have to compete internationally.

They must protect trademarks both nationally and internationally. There are international norms for trademark protection through the TRIPS Agreement. Now, many brands register trademarks in several countries. Trademark infringement cases have also grown due to globalisation. Sometimes, the same brand name and logo can lead to infringement. On the other hand, globalisation has raised consumer expectations.

They now demand better packaging and quality branding. Therefore, domestic companies need to work on their brand identity.

XI. CONSUMER PSYCHOLOGY AND BRAND LOYALTY

The success of branding depends upon psychology. Not all choices made by consumers are rational. Most purchases depend upon emotions. Brands of drinks know this very well. Brands create identity. It might be that people purchase beverages because of the feeling they get from drinking it socially.

For instance, drinking premium whiskey can create a feeling of sophistication in someone. There is usually a sense of friendship when consuming beer brands. Romance is associated with many wine brands. All this is part of emotional branding, which results in consumer loyalty. As a result of brand loyalty, consumers will keep purchasing the same drinks. In the end, profits increase. That is the reason branding identity needs to be protected using trademarks.

XII. ETHICAL ISSUES IN ALCOHOL BRANDING

Ethical issues arise from branding alcoholic drinks. There are concerns about the use of branding, which makes drinking glamorous. It enhances the attractiveness of alcohol. This could affect youth consumption.

Another form of unethical marketing is surrogate advertising. Health campaigners have been calling for more restrictions on advertising. At the same time, firms defend their rights to trade freely. Consumers have the freedom to make decisions. Finding a balance between business and health considerations is a challenge. The government should regulate without interfering with healthy competition among businesses.

XIII. FUTURE OF INTELLECTUAL PROPERTY IN ALCOHOL BRANDING

The future of alcohol branding will be more technological. Innovations such as artificial intelligence, augmented reality, and blockchain technology could reshape brand-consumer interactions. Blockchain can aid in curbing counterfeit through digital verification protocols.

Branding using NFTs could also become a trend for luxury goods. AI can process consumer data to enhance branding strategies. However, as brands go digital, infringement becomes a risk. Trademark regulations should evolve to meet these challenges. Firms will require robust digital enforcement measures. The future of alcohol branding will rely on both technology and regulation.

XIV. CONCLUSION

It is obvious that an investigation of intellectual property rights in the alcohol industry in India demonstrates a great connection between branding and legal protection in the current business sphere. While many other branches of production operate without any restriction regarding advertising and interaction with the customers, alcohol producers are bound by a large number of legal norms in India. As advertising the production is restricted by legislation, intellectual property rights serve as a primary means for the identification of products and formation of brand loyalty. Therefore, this alcohol industry stands out with the example of direct involvement of legal norms into business.

In the course of the research performed, trademarks prove to be the cornerstone of brand creation in the industry considered. A trademark is more than just a company's symbol. It is the identification mark of the product, its identity. The consumer usually establishes confidence in the product based on his or her experiences during use. This confidence is associated with quality, reliability, and high reputation in the market. In due course, this confidence becomes a part of the brand image embodied in the trademark. In the case of alcohol, consumers often choose the products basing on their reputations.

Moreover, trade dress and packaging can be considered among the most potent brand elements as well. Since the products of alcohol are widely marketed open to view in retail outlets, bars, restaurants, etc., its design can play a crucial role. Appearance of the bottles, labels, colours used in the packaging, as well as the overall design make a huge impact on the consumers' choice. Often, consumers distinguish certain products not by the names but rather by the visual appearance alone. Packaging thus

turns out to be silent advertising. Trade dress as a brand element takes a much greater role in the alcohol industry than elsewhere since it acts as both a product and a marketing technique.

The role of surrogate advertising is especially emphasized in the case of India. As alcoholic beverages can hardly be advertised, manufacturers use alternative products like soda, bottled water, musical events, lifestyle products, etc., under the same brand. Such a method maintains consumer association with the brands despite the ban.

FOOTNOTES

- [1] WIPO.
- [2] *Trademarks Act*, 1999.
- [3] UNCTAD, *World Investment Reports*.
- [4] *Khoday Distilleries v. Scotch Whisky*, (2008) 10 SCC 723.
- [5] *Colgate Palmolive Co. v. Anchor Health & Beauty Care Pvt. Ltd.*, 2003 SCC OnLine Del 100.
- [6] *Cable Television Network Rules*, 1994, Rule 7.
- [7] *Information Technology Act*, 2000.
- [8] *Tata Sons Ltd. v. Manu Kosuri*, 2001 SCC OnLine Del 152.
- [9] (2008) 10 SCC 723.
- [10] 2013 SCC OnLine Del 2015.