GLOBAL BRANDS IN INDIA

Indian Economy and Global Brands

According to one estimate 17% of the world's population resides in India as it is the second most populous country in the world after China. Out of the total population of 1.2 billion, the middle class comprises more than 300 million. The sheer size has the potential to drive the Indian economy in the fast lane. This scenario has transformed India into a destination forcing global brands to venture, explore and exploit the grand pool of pristine resources/marketing capacity at hand. According to AT Kearney FDI Confidence Index, India is ranked as the second most attractive destination in the world after China to bring in foreign direct investment.

The liberalization of Indian economy, which was initiated pursuant to the new Industrial Policy of 1991, has gradually resulted in attracting global brands such as NIKE, REEBOK, ADIDAS, CARTIER, HUGO BOSS, MARKS & SPENCER, clothing retailer/s such as BENETTON, ZARA, LACOSTE, MANGO, LOUIS VUITTON, GIVO etc., to venture into the Indian market through their Indian franchisees. Additionally with the setting up of western style malls in almost all the major cities of India, the attitude and style of the Indian urban population is also fast changing.

Recently, in the later part of 2012, Indian government took another bold decision to open up Indian economy to the foreign retail players (both for single and multiple brand stores). Thus major brands are taking positions to take advantage of the new liberalization policy.

Then and now

However, as stated above, the transition from slow moving agrarian economy to the one becoming the most sought after, has been gradual. Through the 60's, 70's and much of 80's, the policy of the Indian polity was more inclined towards socialist views and it was focused towards development of the indigenous industry. During this phase the government policy encouraged development of Indian Industry and brands. The policies at that time were bit hostile and rigid which led to the brands such as IBM and COCA COLA to close down their shops in India during the tumultuous phase of the 70's. Thereafter for more than a decade India remained a closed door economy. Also, there were clear restrictions in place for use of the foreign brands. The investment climate offered little or no incentive to the foreign brand owners to licenses their marks for use by Indian companies as no

Payment of royalties was allowed thereon. Furthermore, there were restrictions on establishing wholly owned or majority owned subsidiaries by foreign companies.

The globalization of world economy lead to change in the mindset of the Indian government. In the year 1991 Indian government embarked upon liberalizing its industrial policy and opened certain sectors of the economy to the foreign players though in a controlled manner. By 1993, the Indian government brought about policy change allowing use of foreign brands in India through franchising arrangements.

Hybrid Brands in India

As the Indian market was gradually opening, the early nineties witnessed a large number of joint ventures in automobile sector coupled with transfer of technology. Interestingly, such joint ventures gave rise to the formation of what were called as hybrid brands whereby the foreign company and its Indian partner would combine their main corporate names and form such brands. Good examples of such marks are TATA-TIMKIN for bearings, KAWASAKI-BAJAJ for motorcycles, HERO-HONDA for two wheelers, LML-VESPA for two wheelers, MARUTI-SUZUKI for cars, SWARAJ-MAZDA for automobiles, LEHAR-PEPSI for aerated drinks etc. The Indian market would hold such a sway for the foreign players that they even agreed to develop such hybrid brands in turn risking their own brand name's distinctiveness *per se*. In terms of brand familiarity it was thought to be an easy way to get closer to Indian consumer. However the year 1993 onwards and pursuant to the Uruguay Round Agreement and consequent to the economic reforms in India, companies have more or less given up on registration/use of the hybrid brands.

Localization of Global Brands in India

Localization of the global brands in India is an important issue when it comes to acceptance of well-known western brands by the Indian consumer. On the surface it seems that acceptance of global brands should be easier given that English is widely spoken. However India has 22 official languages beside English and Hindi. Further each state in India has different history, language, and culture making it difficult for brand owners to devise a strategy that fits all. What perhaps adds to the complexity is that in India the old and the new modern world exists side-by-side.

One international brand that has achieved widespread local acceptance in India is McDonald's. If one was to learn from McDonald's experience it seems if you spend time in converting yourself into an Indian company that caters to Indian taste, you stand a better chance to succeed. The restaurant chain has made and strives to make numerous efforts to localize its menu. In India it offers Chicken McGrills and McAloo Tikki burgers with mint sauce which suits the Indian taste buds. Further the

Company also keeps in view the religious susceptibilities of Indian people which, of course is a sensitive issue for Indian people.

McDonald is not alone, Pepsi's snack division had to come out with snack food preparations that matched or rather suited to the Indian palate such as potato chips with powder of salted mint leaves sprinkled on them or assortment of salty treats made from rice flakes to the extent that they used the word/mark KURKURE (which means crisp in Hindi). The latest in this list is QUAKER bringing out Oat recipes and ready mix to suit Indian taste buds.

In the automobile sector, established international giant players such as Ford, Toyota, Hyundai, General Motors have even gone to the extent of setting up of manufacturing plants in India producing cars that are in more consistent with the attitude and mind set of Indians to go for fuel efficient vehicles and at the same time introducing features and making cars that that are more attuned to the rough and dusty Indian conditions.

To sum up a popular strategy for many brands has been to globalize logos, brand names and trademarks while introducing product variations at the local level. Thus, it is apparent that the Companies are making an effort to be accepted as local brands having global appeal. Hindustan Lever (a subsidiary of Unilever) has quite successfully built on that strategy. Not many consumers in Indian realize that LUX, SURF or SUNSILK are global brands. These brands are not only well known to urban population but also to rural and are accepted as local brands.

Judicial Trends - Protection of Global Brands in India

During the 70's and 80's due to restrictive investment climate, India was not a priority market for multinational corporations. Resultantly companies were not willing to invest in protection of their IPR's. In many cases the companies would not even seek to register their brands as they saw no potential to use them in near future. The judicial thinking was also tilted towards protecting local industry. Thus unless a foreign brand was in use in India, the courts would generally not interfere its use by an Indian company. The court procedures were complex and lengthy. On the ground that the foreign brand was not in use the court would conclude that balance of convenience is in favors of Indian company. Therefore, no interim relief would be granted. Ultimately the long time and delays it would take in conducting a trial would mean that battle was as good as lost.

However there was a major shift in judicial thinking in the late 80's to the extent that in the case *Kamal Trading Company versus Gillette UK* Limited, involving 'Gillette' company's 7'O' CLOCK brand name covering safety razors, safety razor blades, shaving creams and brushes etc., the court even recognized brand's residual reputation. The court took note of the fact that Gillette Company's products under the brand name 7'O' CLOCK was available since the year 1913 and they had been also sold in India through a licensing arrangement with the Indian company. In the year 1985, Gillette (the Plaintiff Company) came to know of the mark 7'O' CLOCK being used on brushes which were not of their manufacture or under their licensing arrangement. This led to brief exchange of correspondence and then the Plaintiff Company brought a suit against the Indian company. In reply the Indian company contended that there was no use of the mark 7 'O' CLOCK after 1958 and whatever goodwill had accrued it have been in favor of the Indian company as they are in business since the year 1982. The court accepted the contention of the Plaintiff Company that they had acquired worldwide goodwill and reputation in the said trade mark and the customers purchasing such goods would immediately connect the goods to the Plaintiff Company who were the registered owners of the trademark. The court repelled the contention of the Indian company that the goodwill in favor of the English company stands extinguished due to non-use of the goods because of the import restrictions in place.

The court expressed its dissent from the proposition laid down by the UK court in popularly known as BUDWEISER judgment (1984 FSR 413) which had laid down the principle namely that unless there was business activity in the local jurisdiction in the place where passing off was alleged to have been taking place, such an action cannot be maintained. The court while dissenting from this principle observed that "it is not possible to conclude that the goodwill or the reputation stands extinguished merely because the goods are not available in the country for some duration. It is necessary to note that the goodwill is not limited to a particular country because in the present days the trade is spread all over the world and the goods are transported from one country to another very rapidly and on extensive scale. The goodwill acquired by the manufacturer is not necessarily limited to the country where the goods are freely available because the goods though not available are widely advertised in newspapers, periodicals, magazines and in other media. The result is that though the goods are not available in the country the goods and the mark under which they are sold acquire wide reputation".

In another landmark Judgment passed in the year 1991 – *Apple Computer Inc., v Apple leasing and Industries*, the court once again dissented from the BUDWEISER principle and recognized the element of awareness of the mark sans the physical presence of the goods.

The proposition that reputation and goodwill transcend boundaries was once again upheld in another landmark decision in the year 1994, viz., *Whirlpool Corporation v N.R. Dongre.* Interestingly, the Defendants in this case had attained registration of the mark WHIRPOOL. The court recognizing the trans-border reputation of the trademark WHIRPOOL held that "the Plaintiff was trading in the whirlpool products in several parts of the world and also sending the same to India though in a

Limited circle, Whirlpool associated with the Plaintiff was gaining reputation throughout the world. The reputation was traveling trans-border to India as well through commercial publicity made in magazines which are available in or brought into India. These magazines do have a circulation in the higher and upper middle income strata of Indian society. Washing machine is a household appliance used by the middle and upper class of the society. The Plaintiff can bank upon the trans-border reputation of its products washing machines for the purpose of maintaining the passing off action in India''. Interestingly in this case in spite of the fact that the Plaintiff's registration for the mark WHIRLPOOL had lapsed, the court did safeguard and protect the interest of the foreign owner against passing off at common law.

Taking note of the above decisions, the provisions for protection of well-known marks was included in the new Trademarks Act that came into force in 2003. Section 2(1)(zg) defines a 'well-known trademark' as one "which in relation to any goods, means a mark which has become so to the substantial segment of the public which uses such goods that the use of such mark in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person using the mark in relation to the first mentioned goods".

Different field of activity / business

One of the common problems faced by global brand owners in the Indian market is that due to popularity of their brands they are indiscriminately copied by Indian companies for completely different or unrelated goods. Incidence of well-known brands being used as part of corporate/trade name is quite common. It is quite challenging to stop such use particularly where it is adopted for completely different or unrelated goods. The obvious argument of the traders in such cases is that there being no commonality of trade channels and end users of products or services, no confusion will be caused.

Once again to arrest this trend the courts came to the rescue of brand owners. In yet another landmark judgment delivered in 1994 in a passing off action brought by Daimler Benz, manufacturer of famous BENZ cars against a company using the brand name BENZ with pointed star device, the court while granting an injunction restraining misuse of the mark and logo observed that "the Trademarks law is not intended to protect a person who deliberately sets out to take the benefit of somebody else's reputation with reference to the goods especially so when the reputation extends worldwide". The Judge observed that "the word BENZ as a name of the car would be known to every family that has ever used the quality car. The name BENZ as applied to a car has a unique place in the world. There is hardly one who is conscious of existence of cars/automobiles who would not recognize the name BENZ used in connection with cars''.

Thus the Indian court/s have clearly enunciated and acknowledged the well-known status of such marks and how unscrupulous use of such marks – even though in relation to unrelated goods – can dilute the distinctiveness associated with the mark of such an international stature. The criteria to be entitled to claim such a protection

is also now well established that the party seeking relief must establish by way of evidence that mark is well known and used globally and that there was awareness of the mark in India.

Conclusion

To sum up India is a growing economy and has enormous business potential. The global brands have been present in India for several decades now. The issue of concern was of course safeguarding and protecting interest of brand owners. The judicial thinking in this regard has undergone drastic change over the years. The positive thinking on the part of the Indian judiciary has encouraged foreign companies to venture openly into the Indian market which is of benefit not only to the brand owners but to the Indian public as well as it would lead to creation of new jobs. Also, the Indian consumer is spoilt for choices of products which are international in nature, content and standards.

Vatika Towers
10th Floor Block-B
Sector-54
Gurgaon-122002
National Capital Region (Haryana)
India

Tel. +91 124 4655999
Fax. +91 124 4045047
Email info@indiaiprights.com