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Legal Ambiguities in Addressing Ghost Trademarks: A Comparative Analysis on Indian Trademark Law and International Jurisdictions

Layasri B[1], Cruz Joshna I[2]

[1,2]5th year, BBA LLB(Hons.), SASTRA Deemed University

Abstract:
A growing obstacle in the field of Intellectual Property Rights is Ghost trademarks referred to the trademarks that are not actively used in commerce. It provides a subtle difficulty in intellectual property law particularly in balancing the objectives of trademark protection with the need to prevent market distortion. In India as per the Trademarks Act 1999, a trademark should be used authentically and consistently; if not, it can be removed upon evidence of non-use. However, ghost trademarks continue to exist due to defensive registrations, procedural backlogs, and enforcement constraints. This research undertakes a comparative analysis on various jurisdictions including the United States, the European Union, and China. Each jurisdiction has distinct mechanisms in addressing ghost trademarks. The US depends on stringent use in commerce and periodic declarations of use; the EU emphasizes proof of use within five years after registration, unless genuine reasons for non-use are provided; China implements non-use cancellation actions to stop trademark hoarding. It is revealed by the comparative lens that though India's legal provisions are conceptually in line with international standards, there are procedural inefficiencies that dilute their effectiveness. From a critical perspective, ghost trademarks in India compromise the integrity of the trademark registry, allowing speculative hoarding and making it more difficult for genuine businesses to enter the market. To resolve this issue, evidentiary requirements for renewal should be strengthened, cancellation proceedings should be accelerated, and transparency in the registry must be promoted. The study concludes that though India's legal framework appears to be strong in theory, its practical enforcement requires modifications to conform with best practices globally to ensure fair competition and promote brand authenticity.

Keywords: Ghost trademark, Trademark Act 1999, non-use, trademark registry, residual goodwill, abandonment.

1. INTRODUCTION:

A trademark is a unique sign, symbol, or design which identifies and distinguishes goods and services from other products, thereby serving as a prominent element of brand recognition in marketplace, A trademark is the foundational aspect for every commercial identity; however, the issue of the Ghost trademark issue, still persists while being utilised in commerce.

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[1] Layasri B, 5th year, BBA LLB(Hons.), SASTRA Deemed University
[2] Cruz Joshna I, 5th year, BBA LLB(Hons.), SASTRA Deemed University

These marks are more than just an unused trademark which have a huge impact on legitimate market participants. These trademarks prevent new entrants from registering, and it also raises the litigation costs, distorting the trademark by failing to represent current mark realities. In some countries, it also means marks that are resurrected after a long period of inactive use, thereby ultimately causing consumer confusion.
The trademarks act of 1999 protects a mark against non-use for commercial purpose in India by cancelling the marks upon proving that for a period of five years it was not used by the original owner. Despite this, ghost markings continue, owing mostly to procedural inefficiencies, evidential barriers, and corporate defensive manoeuvres. In contrast, countries including the United States, the European Union, and China have developed unique legal measures to counteract ghost trademarks more successfully.
The current study explores different approaches, looking at both the conceptual challenges and the practical ambiguities in implementing ghost trademark control. It also accentuates adequacies the ambiguities in Indian legislation, urging revisions to match India's system with foreign best practices.

2. LITERATURE REVIEW:

From the research, "A Study of Indian and US Trademark Law Relating to the Effect of 'Non-Use' of a Trademark," highlights that, although proof of use is not universally required for registration or renewal, it is pivotal for maintaining trademark rights. The author notes that non-use leads to loss of trademark rights and that most jurisdictions, including India and the USA, permit third-party petitions to cancel registrations for non-use. The US adopts stricter use requirements, such as periodic declarations and stricter proof at renewal under the Lanham Act, which minimizes registry deadwood and keeps trademark registers more current. In contrast, India relies on a five-year non-use period and does not require proof of use for renewal, making the registry more susceptible to inactive marks ("deadwood"). The article further explores how broad interpretations of "use" in India, including advertising and minimal acts, complicate the cancellation process and contribute to procedural inefficiency. The author concludes that periodic proof-of-use requirements and expedited cancellation processes, as exemplified in the US system, would be beneficial reforms for India’s trademark regime to prevent ghost trademarks and registry clutter.
The research, "A Study on the Effect of Non-Use of Trademarks in India," shows a thorough doctrinal examination of non-use clauses and the impact of unused trademarks in Indian Law. The study argues that, while trademark rights in India are intended to come from legitimate commercial usage, procedural regulations do not demand proof of continuing use for renewal, making register clutter and ghost trademarks a recurrent problem. It also highlights how the five-year timeframe for non-use removal under Section 47 of the Trade Marks Act frequently enables inactive marks to survive, because cancellation actions are based on third-party complaints. The burden of proof for non-use falls on challengers, thus impeding rectification efforts.[3]
From the research, Residual Goodwill in Unused Marks- The case against Abandonment, explains that Ghost trademarks are those that are not actively used in commerce but are nonetheless registered, usually due to defensive tactics, procedural loopholes or delays in enforcement. They can create practical issues by clogging trademark registers, making it more difficult for new enterprises to enter the market, and perhaps leading to consumer misunderstanding or unfair competition. In the US, such marks can be

[3] Shoaib, Md. (2022). Study on the Effect of Non-Use of Trademarks in India. Indian Journal of Law and Legal Research, 4, 1–8.

revoked based on proved non-use and lack of desire to resume, the EU emphasises actual usage within five years and China permits third parties to initiate cancellation for non-use.[4]

3. RESEARCH PROBLEM:

Despite legal provisions under the Indian Trademarks Act, 1999 for cancellation due to non- use, ghost trademarks persist due to lack of definition of "use" which collectively undermine the integrity of Trademark system compared to international best practices.

Regardless of statutory provision, Indian trademark law still fails to provide a clear and enforceable mechanism to deal with ghost trademarks, resulting in registry clutter, speculative hoarding, and barriers to market entry. The unsettled issue lies in the clarity around "use" inefficient cancellation processes and the absence of proactive proof-of-use requirements, which collectively undermine the integrity of Trademark system compared to international best practices.

4. RESEARCH OBJECTIVES:

1. To examine the doctrinal ambiguities surrounding the interpretation of "use" and "abandonment" under the Trademark Act 1999 and their impact on persistence of ghost trademarks in India
2. To evaluate the practical limitations and procedural inefficiencies in the enforcement of non-use cancellation provisions within the Indian Trademark System.
3. To conduct a comparative analysis of the legal approaches adopted by the US, EU, and China in addressing non-use.
4. To assess the implications of ghost trademarks on fair competition, consumer protection, and market accessibility for genuine businesses in India
5. To propose a set of doctrinal and procedural reforms- including periodic proof-of-use submissions, transparent registry practices, and expedited cancellation mechanisms- to strengthen India's trademark framework in alignment with international best practices.

5. DEFINING GHOST TRADEMARKS:

Ghost trademarks, come into force after the abandoned or dead marks are revived. The term "ghost" simply means returning from the dead. It can also be defined as a previously abandoned trademark that is brought into use by a new entity to leverage the residual consumer goodwill or loyalty. If the marks are not in commercial use and the owner abandoned them are known as ghost trademarks when a third party uses them. It is also pertinent to mention here that abandonment alone cannot constitute a ghost trademark. The cause or creation of a trademark is widespread consumer recognition and residual goodwill. One more element required, however, for a ghost trademark to exist is that the trademark must be adopted by someone other than the original trademark owner and must be used in conjunction with similar or the same products that the original owner was using them for. [5]

6. INDIAN PERSPECTIVE:

The Ghost Trademarks in India is not statutorily recognized. But some key cases have acknowledged the

[4] Michael S. Denniston, Residual Good Will in Unused Marks - The Case against Abandonment, 90 TRADEMARK REP. 615 (July-August 2000).
[5] https://www.mondaq.com/india/trademark/637562/zombie-trademarks-what-is-dead-may-never-die.

principle that abandoned trademarks may still retain residual goodwill and be protected from trademark infringement. According to Section 47 of the Trademarks Act 1999 in India, a mark can be revoked after five years and three months of inactivity. The act on the other hand, does not offer a precise definition on the term “abandonment”. Courts have also attempted However, the Act does not provide a precise definition of "abandonment." Courts have attempted to define abandonment as a combination of non-use and a decision not to resume use. However, ambiguity exists since registrants regularly engaging in token actions in response to charges of abandonment.

47. Removal from register and imposition of limitations on ground of non-use.

(1) A registered trade mark may be taken off the register in respect of the goods or services in respect of which it is registered on application made in the prescribed manner to the Registrar or the Appellate Board by any person aggrieved on the ground either—

(b) that up to a date three months before the date of the application, a continuous period of five years from the date on which the trade mark is actually entered in the register or longer had elapsed during which the trade mark was registered and during which there was no bona fide use thereof in relation to those goods or services by any proprietor thereof for the time being

(2) Where in relation to any goods or services in respect of which a trade mark is registered

(a) the circumstances referred to in clause (b) of sub-section (1) are shown to exist so far as regards non-use of the trade mark in relation to goods to be sold, or otherwise traded in a particular place in India (otherwise than for export from India), or in relation to goods to be exported to a particular market outside India; or in relation to services for use or available for acceptance in a particular place in India or for use in a particular market outside India;

(3) An applicant shall not be entitled to rely for the purpose of clause (b) of sub-section (1) or for the purposes of sub-section (2) on any non-use of a trade mark which is shown to have been due to special circumstances in the trade, which includes restrictions on the use of the trade mark in India imposed by 28 any law or regulation and not to any intention to abandon or not to use the trade mark in relation to the goods or services to which the application relates.[6]

Boman R. Irani vs. Rashid Ahmad Mirza

In this case the mark "YEZDI" was used by plaintiff for manufacturing motorcycles since 1969 and later abandoned the mark. The defendants in 2015 started using an identical mark for footwear, claiming abandonment. The plaintiff stated that the mark was still well known by the consumers and has residual goodwill. The Delhi high court held that though the plaintiffs are not using the mark, it has goodwill and recognized by the consumers. The defendants were injuncted from using this mark and not in any way inspired or associated with YEZDI motorcycles. [7]

This case emphasized that a third party cannot use a trademark when residual goodwill exists, though it has not been in use.

7. ANALYSIS OF GHOST TRADEMARKS IN INTERNATIONAL JURISDICTIONS:

7.1.US AND INDIA:

The Lanham Act in the United States defines abandonment as stopping use without the plan to start again. A three-year period of non-use is considered prima facie evidence of abandonment, although the question

[6] The Trade Marks Act 1999.

[7] Boman R. Irani vs. Rashid Ahmad Mirza CS(COMM) No.1021/2016.

of intent continues to be debated. This creates confusion because proprietors can claim subjective intent to resume use despite protracted inactivity. Also, if there exists residual goodwill, the new user may face legal challenges.

Section 45 of the Lanham Act (15 U.S.C. § 1127)

Abandonment of mark. A mark shall be deemed to be "abandoned" if either of the following occurs: (1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall be prima facie evidence of abandonment. "Use" of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark. (2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark. Purchaser motivation shall not be a test for determining abandonment under this paragraph.[8]

The Real USFL, LLC v. Fox Sports, Inc.

The Real USFL, LLC sued Fox Sports alleging trademark infringement as Fox Sport sought to launch a new league with same name and branding in 2022. The court found that The Real USFL, LLC had established sufficient continuous use and intent to resume use in commerce through licensing agreements, media projects and royalty management. The court indicated that Real USSFL may succeed against Fox sports. After this Fox Sports settled with the Real USFL, LLC allowing Fox Sports to continue using the mark for its league.[9]

Adamson Sys. Eng'g, Inc. v. Peavey Elecs. Corp.,

Adamson petitioned to cancel Peavey's U.S. trademark registration for the mark "CS" for amplifiers. The TTAB found that Peavey's sales were "de minimis" in some recent years and zero in others. Further resale by third parties did not inure to respondent's benefit. Neither did the repair and refurb business for the CS amplifiers displayed the CS mark. The board found that devoid of evidence showing any intention to resume use of the mark. Residual goodwill did not negate a finding of abandonment based on non-use. The board ordered for cancellation of the CS mark.[10]

To-Ricos, Ltd. v. PAS (First Circuit)

PAS sold "Pollo Picu" brand chicken until 2011. Later stopped due to financial trouble and litigation with bank. In 2016 To-Ricos applied to register the same mark as PAS has abandoned it as three years of non-use. The US District Court found as there was non-use for atleast three years establishing a prima facie case of abandonment. PAS did not provide sufficient evidence of intent to resume use. The US Court of Appeals for the First Circuit reviewed the case and affirmed the district court's decision and emphasized that mere explanations for non-use or vague intentions to resume use are insufficient to rebut the presumption of abandonment.[11]

The US approach of treating three year's non- use as a prima facie evidence of abandonment and shifting the burden of proof on the trademark owner is clearer than India's five year standard. US law requires not just non-use, but evidence of lack of intent to resume, this objective review reduces subjectivity and uncertainity, Indian courts could clarify their stance on what constitutes convincing evidence of intent,

[8] https://www.uspto.gov/sites/default/files/trademarks/law/Trademark_Statutes.pdf.

[9] *The Real USFL, LLC v. Fox Sports, Inc.*, (C.D. Cal 2022) (No. 2:22cv1350).

[10] Adamson Sys. Eng'g, Inc. v. Peavey Elecs. Corp., Cancellation No. 92076586, (T.T.A.B. Nov. 1, 2023).

[11] To-Ricos, Ltd. v. Productos Avicolas del Sur, Inc., No. 22-1853 (1st Cir. 2024).

and discourage mere formal or defensive claims. India can strengthen the non-use presumption by adopting the US standard that three years of consecutive non- use constitutes prima facie evidence of abandonment and to issue guidelines clarifying "intent to resume use" and documentary requirements.

7.2.EUROPEAN UNION AND INDIA:

The EU adopts a stricter approach. They try to balance the interests of marketplace and public by genuine use aspect and ensure that a mark is not warehoused without active use and commercial intent. The idea of "genuine use" is fundamental. Failure to establish the legitimate usage within a period of five years of registration makes the mark liable to revocation. The Court of Justice of the European Union (CJEU) has emphasised that use must be compatible with the trademark's primary function, is to identify the source and ensure quality.

According to Article 58(1)(a) EUTMR, if within a continuous period of 5 years after the EUTM has been registered and before the filing of the application for cancellation the EUTM has not been put to genuine use, within the meaning of Article 18 EUTMR, then the EUTM must be revoked unless there are proper reasons for non-use.

Pursuant to Article 58(2) EUTMR, if the EUTM has been used for only some of the goods and services for which it is registered, the revocation will be limited to the goods and services not used.[12]

Big Mac v. Supermac's

Supermac's challenged McDonald's EU trademark "BIG MAC" for the non-use of this mark for certain goods/services. The EUIPO partially cancelled this trademark of McDonald's after finding their evidence did not prove their genuine use for few goods/services. The General court upheld this partial cancellation and confirmed that even well-known brands must actively use their marks or lose protection for non-use. From this case it is also understood that reputation or past fame of the mark does not exempt the owner from the requirement of genuine use.[13]

TES EU Trademark Case

In this case the General court partially cancelled the "TES" EU trademark for measuring instruments after finding insufficient proof for genuine use. This ruling also clarified that genuine use must be commercial and efforts have been made to acquire or maintain market share; mere registration is not enough. In assessing this intensity of use, sales volume, promotional investments, characteristics of goods/services and the sector in which they are offered are considered to be key factors.[14]

India:

India can adopt the EU's principles that a trademark must show genuine use within a five-year period post-registration, or be liable to revocation. This would strengthen India's existing non-use provisions(which are currently five years but less clearly defined) by requiring objective proof .India can consider formalizing criteria to the EU's – looking at sales volume, promotional efforts, market share and use compatible with the marks function to identify source and quality.

[12] https://guidelines.euipo.europa.eu/1922895/1788526/trade-mark-guidelines/2-2-non-use-of-the-eutm-%E2%80%94-article-58-1--a--eutmr.

[13] Big Mac v. Supermac's (General Court, T-58/23, 2024).

[14] TES EU Trademark Case (General Court, ECLI:EU:T:2025:48).

7.3.CHINA AND INDIA:

China has limited judicial or statutory recognition of ghost trademark. Chinese legislation allows for the cancellation of a mark if it has been unused for three years in a row. Unlike the United States, purpose plays a minor part; the emphasis is on demonstrable market activity. This demonstrates China's efforts to fight widespread trademark hoarding.

Article 44 of Trademark Law of the People's Republic of China states that: Where any person who uses a registered trademark has committed any of the following, the Trademark Office shall order him to rectify the situation within a specified period or even cancel the registered trademark: (4) where the use of the registered trademark has ceased for three consecutive years.[15]

India can consider reducing the current five-year non-use period to a three-year threshold like China, which strikes a balance between allowing reasonable commercial investment and combating trademark parking. Lowering barriers for third parties to file cancellation petitions, and ensuring the regional use of evidence would improve the registry clutter. Allowing any interested party, not just competitors to file non-use cancellation petitions with fewer procedural hurdles could enhance registry cleanliness and discourage speculative trademark hoarding.

In all the above jurisdictions, the main issue is the proof of abandonment or non-use, residual goodwill, and consumer confusion. To revive a ghost trademark is complicated in common law countries like US, where the residual goodwill and association of consumers with the original owner can restrict the entry of new competitors. Whereas in the EU and China it is more formalistic where it is clearly stated that use or lose registration and only few objections can be made by the original owner for abandonment.

8. LEGAL AMBIGUITIES FACED IN INDIA:

1. **Lack of statutory recognition**: In the Trademarks Act 1999 there is no provision for ghost trademarks and it is not explicitly recognized under any statutes or regulations. Sec 47 allows a party to apply for removal of registered trademark if it has not been used for a period of five years. In the act there is no definition for the word "use". [16]So courts have difficulty in regulating or addressing the issue of reviving abandoned marks.
2. **Residual goodwill:** In the case Boman R. Irani vs. Rashid Ahmad Mirza it is held that residual goodwill in abandoned mark can subsist for a considerable time even after non-use.[17] There is no proper legal threshold or standardized test for determining when residual goodwill comes to an end and abandoned marks is open for use or registration by others. Sometimes it may unfairly limit the new entrepreneurs from using a trademark and it creates legal uncertainity. In the case Boman R. Irani vs. Rashid Ahmad Mirza it is held that residual goodwill in abandoned mark can subsist for a considerable time even after non-use.
3. **Reliance on judicial decisions:** There are only limited precedents for this issue. One of them is the landmark judgment of the case Boman R. Irani v. Rashid Ahmad Mirza [18]and it dealt with residual goodwill and misuse abandoned trademarks. But such rulings are fact specific and it cannot be relied in all circumstances.

[15] https://english.cnipa.gov.cn/transfer/lawpolicy/relatedawsregulations/915599.htm.
[16] The Trade Marks Act 1999.
[17] Boman, supra note 5.
[18] Boman, supra note 5.

9. CONCLUSION:

The comparative study of ghost trademarks reveals that while India's legislative framework under the Trademarks Act, 1999 formally recognizes the principle of non-use cancellation, practical enforcement is severely weakened by ambiguities, procedural delays, and evidentiary burdens. Ghost trademarks persist in the registry because of defensive registrations, token use, and inefficient cancellation mechanisms, which collectively distort competition and hinder genuine enterprises from securing distinct marks. The lack of statutory recognition of ghost trademarks, coupled with the absence of a clear framework on residual goodwill, creates uncertainty for both original owners and new entrants, leading to unnecessary litigation and consumer confusion.

When viewed globally, India's framework appears outdated in implementation. Jurisdictions like the United States, through periodic declarations of use and stricter cancellation standards, actively prevent registry clutter and deadwood. The European Union enforces the principle of "genuine use" within five years, striking a balance between brand protection and market access. China also adopts a proactive approach by allowing non-use cancellation actions after three years, thereby curbing the fast-growing problem of trademark hoarding. Unlike these jurisdictions, India's reliance on long non-use periods, challenger-driven cancellation applications, and the broadly interpreted notion of "use" weakens the efficacy of non-use provisions.

To address these inefficiencies, India must move towards proactive monitoring and procedural reforms. Introducing statutory recognition for ghost trademarks, implementing mid-term proof-of-use filings, and adopting a shorter non-use threshold can significantly reduce registry clutter. Furthermore, developing clear guidelines for assessing residual goodwill and ensuring greater transparency in the trademark registry will bring much-needed certainty to this evolving area of law. Stronger enforcement mechanisms, coupled with consumer awareness initiatives, can also mitigate risks of deception and protect both businesses and the public from unfair practices.

In conclusion, though India's legal framework for abandonment of a trademark and non-use is aligned with global standards, it faces practical inefficiencies which undermine the integrity of trademark system. Reforms and mechanisms inspired from US, EU and China are essential to ensure that India handles issues of ghost trademarks effectively, promotes brand authenticity and to provide a fair market competition to ensure competitive commercial environment.

10. SUGGESTIONS:

1. **Statutory Recognition and Definition:** Introduce explicit statutory provisions to recognize ghost trademarks and revival of abandoned trademarks. Include legal criteria for non-use, abandonment and quantification of residual goodwill.
2. **Stronger Enforcement and Transparency of Registry:** Legal remedies against use by unauthorized third party should be strengthened as they exploit abandon trademarks with residual goodwill. Include provisions for injunctions, damages and criminal sanctions. There should be transparency in trademark registry to the public and include the details of genuine use and residual goodwill.
3. **Proper Guidelines for Residual Goodwill:** To assess residual goodwill during trademark disputes, cancellations and revive petitions proper comprehensive guidelines have to be developed. It should consider the factors like consumer perception, evidence of continued association, minimal use, secondary markets and advertisements. The quantum of period residual goodwill exixts must be determined to protect market fairness.

4. **Adopting a Shorter Non-Use Period:** Shorter 3 year threshold could be adopted like in US, Japan. It ensures that trademark owners must either use their marks in commercial use or risk cancellation which prevents trademark squatting with no business interest. It reduce barrier to market entry and promote fair competition in the market.
5. **Procedures for cancellation:** Strengthen procedures like introducing rules and regulations to cancel a trademark which is not in use to enable faster removal of abandoned marks and prevent from blocking market entry unnecessarily.
6. **Consumer Awareness and Labeling:** Encourage the new users to mention in label or disclosure about revived marks and they are not connected to original user. Make the consumers aware by educating them on revival of marks which prevents consumer confusion.
7. **Active Monitoring and Enforcement:** Encourage the original owners to actively monitor their marks and take timely actions to preserve their goodwill. Enforcement agencies should act promptly to prevent misuse of trademarks with residual goodwill and prevent unfair competition and deception.