

Trademark Infringement Evidence Checklist (India)

Evidence collection and enforcement response for trademark infringement under Indian law

HOW TO USE THIS TEMPLATE

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| 1. | This document: Trademark Infringement Evidence Checklist (India). |
| 2. | Fill all bracketed fields before use. |
| 3. | Template only — not a substitute for qualified legal advice. |

1. TYPES OF INFRINGEMENT AND INITIAL ASSESSMENT

Section 29 Infringement Types. Use of identical mark for identical goods or services (double identity — strongest case); use of similar mark for identical or similar goods or services (likelihood of confusion — most common); use of well-known mark in any class (dilution); and use of a mark in advertising that takes unfair advantage of or is detrimental to the character of a registered mark.

Counterfeiting vs Imitation. Counterfeiting: using the Company's exact mark on unauthorised goods. Imitation: using a confusingly similar but different mark. Both are actionable but counterfeiting warrants more urgent enforcement including criminal action and customs seizure. Assess which category the infringement falls into before deciding enforcement route.

Passing Off Without Registration. Even if the infringer uses their own mark, you may have a passing off claim if: you have established reputation in your mark; the infringer's use misrepresents their goods as connected to you; and this causes damage. Passing off does not require a registered trademark.

Initial Evidence Check. Before investing in full evidence collection: confirm the dates — is the infringer's use after your mark's first use in India?; confirm the marks are similar enough to confuse; confirm the goods or services are similar; and assess whether any licence or authorisation exists.

2. ONLINE EVIDENCE COLLECTION PROTOCOL

Within 24 Hours of Discovery. Take full-page screenshots with URL, date, and time visible; use web.archive.org to create a permanent archived snapshot; download the infringing content (images, descriptions, videos) with download timestamps; capture WHOIS records for any infringing domains; and screenshot social media profiles including follower counts, bio, posting dates, and engagement metrics.

E-Commerce Evidence. Screenshot the product listing page with seller name, price, ratings, and reviews; screenshot the seller information page revealing the registered business; screenshot reviews mentioning confusion with your brand; and if possible, complete a purchase and retain all order confirmations, delivery documents, packaging, and receipts.

Consumer Confusion Evidence. Actively collect: customer service enquiries where customers confused your brand with the infringer; social media posts and comments showing confusion; negative reviews attributable to the infringer's poor products being associated with your brand; and any lost sales leads that went to the infringer due to brand confusion. Consumer confusion evidence is often the strongest element of a trademark infringement case.

3. PHYSICAL MARKET EVIDENCE

Mystery Shopping. Conduct documented mystery shopping: purchase infringing products at retail locations; photograph the retail environment and signage; record seller representations about origin of goods; and document geographic spread of infringing activity. Engage a qualified investigator for large-scale physical market investigations where your own staff cannot credibly conduct undetected purchases.

Reputation and Goodwill Evidence. Compile: annual revenue figures under the mark; annual advertising expenditure; number of years of use; geographic reach; brand recognition evidence (surveys, media coverage, awards, distributor testimonials); and customer testimonials confirming brand recognition. Reputation evidence strengthens both infringement and passing off claims.

Damages Evidence. Document commercial losses: sales reduction in markets where infringer operates; price erosion caused by infringer's lower-priced goods; customer complaints attributable to confusion; lost distribution opportunities; and reputational damage from association with inferior goods.

4. ENFORCEMENT PATHWAYS

Civil Action (Section 135). Suit for injunction and damages in District Court or High Court. File IA simultaneously. Reliefs: interim and permanent injunction; damages; account of profits; delivery up; costs.

Criminal Action (Section 103). For deliberate commercial infringement: imprisonment up to 3 years and fine up to Rs. 2,00,000. File FIR at police station (Economic Offences Wing or Cyber Crime Cell). Most suitable for large-scale counterfeiters.

Platform Takedown. Amazon Brand Registry; Flipkart IP portal; social media IP complaint forms (Instagram, Facebook, Twitter/X); Google Search URL removal for cached content; and app stores (Apple App Store and Google Play IP complaint forms).

Customs Recordal. Record your trademark under the IPRER 2007 with CBIC Customs to prevent import of counterfeit goods at Indian ports and borders.

IMPORTANT NOTE

Working template for Trademark Infringement Evidence Checklist (India). Verify requirements with a qualified IP advocate.

BUILDING A COMPLETE COMMERCIAL EVIDENCE FILE

The commercial context of a trademark infringement case determines both the urgency of enforcement and the quantum of damages available. A comprehensive commercial evidence file serves three purposes: it establishes the infringement itself; it quantifies the harm caused; and it supports the case for a substantial damages award. Revenue and brand investment documentation is foundational. Compile yo

ur audited financial statements showing revenue attributable to the brand for each of the past 3 to 5 years; advertising and marketing expenditure for the brand over the same period; the number of retail points, distribution channels, and geographic markets served; and any independent market research or analyst reports commenting on your brand's market position or reputation. Customer relationship

evidence demonstrates the brand's commercial importance to real stakeholders. Letters from distributors confirming their recognition of your brand and their awareness of the infringer's competing use; testimonials from customers who were confused; and complaints lodged with your customer service team are all highly effective. Consumer survey evidence is the most powerful tool for establishing lik

elihood of confusion and brand reputation. A survey conducted by a reputable market research firm showing: (a) what percentage of consumers in the target market recognise your trademark; (b) what percentage associate the infringing mark with your brand; and (c) what percentage are confused about the source of goods. Courts in the Delhi, Mumbai, and Madras High Courts have relied heavily on survey

evidence in landmark trademark cases including those involving major consumer brands. Budget for a consumer survey in high-stakes trademark infringement matters where a significant damages award is sought.

ADDITIONAL COMPLIANCE GUIDANCE AND BEST PRACTICES

ADDITIONAL GUIDANCE ON COMPLIANCE AND BEST PRACTICES. Indian IP law continues to evolve rapidly, with the Patent Office, Trade Marks Registry, and Copyright Office all implementing digital transformation initiatives that affect how IP is filed, prosecuted, and enforced. The Patents Amendment Rules 2024 introduced new provisions for startup fee concessions and updated the examination procedure timelines. The Trade Marks Act 1999 has been interpreted by courts in a growing body of decisions that clarify how confusion is assessed, how well-known

marks are recognised, and how bad faith is established. The DPDP Act 2023 has implications for IP-linked customer data and product development processes. For each IP action described in this document, the Company should consult a qualified IP advocate licensed to practice before the Indian Patent Office and Trade Marks Registry. IP advocates combine technical expertise with legal training specific to Indian IP law. When selecting an IP advocate, assess: their specific experience in your technology sector or product category;

their track record at the relevant Patent Office branch or Trade Marks Registry; and their ability to coordinate international filings through their network of foreign associates. The IP Manager should maintain a master calendar tracking all IP filing deadlines, prosecution response deadlines, renewal dates, and opposition window close dates. IP deadlines are typically non-extendable and missing them can result in permanent loss of rights. Use a dedicated IP management tool or a carefully maintained calendar system with triple-reminder alerts. Document

all IP decisions and the reasoning behind them. When the Company decides not to file a patent application for a particular technology, document the decision and reasoning. When a trademark opposition is decided not to pursue, document the decision. This decision trail is important for investor due diligence, management continuity, and defence of subsequent IP disputes. Build a quarterly IP Committee meeting cadence: the IP Manager, CTO or Head of Product, CFO, and CEO should review IP programme status, upcoming

decisions, and strategic IP priorities every quarter. This keeps IP on the leadership agenda and ensures that commercial and technical strategy is aligned with IP investment decisions. The IP Committee meeting should produce a brief written record of decisions taken and actions assigned. International IP coordination requires proactive management of priority deadlines. The Paris Convention priority period of 12 months for patents and 6 months for trademarks and designs starts from the Indian filing date. If international protection is planned,

calendar these priority deadlines immediately on the Indian filing date. The cost of filing internationally increases significantly if priority is not claimed because prior art in the intervening period may destroy novelty. Budget for professional indemnity insurance for the IP function. As IP becomes a larger component of the Company's value and IP decisions involve significant financial stakes, the IP Manager and the Company's IP counsel should be appropriately insured against errors and omissions. Review the IP programme's documentation quality

annually. The best IP strategy is undermined by poor documentation. Every IP right should have a complete file: the registration or application document, all prosecution history, all renewal receipts, and all related agreements. Files should be backed up in at least two locations and access-controlled to prevent inadvertent deletion. Template only. Not legal advice. Consult a qualified IP advocate for all decisions affecting the Company's intellectual property rights.