

# All Things IP



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### COLOUR MARKS AND THEIR PROTECTION AS A TRADEMARK IN INDIA

A **colour trademark** is a non-conventional/ unconventional trademark where at least one colour is used to perform the primary function of any trade mark viz., source indicator to uniquely identify the commercial origin of products or services. While traditionally, colour marks were barred from being registered as trademarks, developments in the commercial sector over the past few decades have enabled singular colours or colour combinations that serve a purpose of identification and distinction to be trademarked in many countries worldwide.

Some examples of color marks from across the globe include: Qualitex green-gold (dry cleaning presses), Louboutin red (red soles for women’s high-heel dress shoes), The distinctive Nivea blue (“Pantone 280 C”), Owens-Corning pink (fiberglass insulation), Wolf red (red knobs on cooking appliances), Tiffany blue (light blue for jewelry boxes), UPS brown (brown for parcel delivery trucks and uniforms), T-Mobile magenta (telecommunications services), and Fiskars orange (for scissor handles) etc.

In this article, we will now briefly examine the legal position regarding protection of colour marks as a trademark in India. Section 2 (1) (m) of the Trademarks Act, 1999 (the “Act”), defines a “mark” to include ***“combination of colours”***. Also, Section 2 (1) (zb) defines a “trade mark” inter-alia to include “Combination of colours”. Hence, both these definitions do not specifically provide for singular colour mark within their respective definitions. It is also pertinent to note that the above definitions are inclusive in nature and the under the definition of the word trade mark in Section 2 (1) (zb), the words “capable of being represented graphically” appearing in the definition of the word “trade mark” leads to an inference that as long as a trademark applicant can represent his mark graphically, which also may include a “singular colour” then at the discretion of the Registrar of Trademarks such single colour trademarks can also be technically afforded protection under the Act.

The problem with registering a singular colour trademark is that the applicant needs to establish by cogent and clear evidence the fact that such singular colour has acquired the status of a well-known mark through prolonged and continuous usage. Hence, the degree or standard of proof that is legally acceptable for singular colour trademarks are very high and only when the colour mark achieves such status it becomes easy to acquire a registration of the mark, and not otherwise.

Acquiring the status of well-known mark takes extensive recognition, sales and a long period of time. However, it is also pertinent to note that a colour mark may, depending on the nature of the facts of the matter, also be eligible to legal and judicial protection as a trade dress.



Trade dress generally means the characteristics of the visual appearance of a product or its packaging that signify the source of the product to consumers and is broadly covered under section 2 of the Act. For instance, in the case of *Beiersdorf AG vs RSH Global Pvt Ltd*, the Delhi High Court has recently restrained RSH Global Pvt Ltd, which operates under the brand name “Joy”, from using, manufacturing, selling, advertising, directly or indirectly dealing in cosmetic products that are deceptively similar to that of Beiersdorf AG’s NIVEA in terms of label and trade-dress. While the distinctive Nivea blue (“Pantone 280 C”) has been given protection since 2007 by the German Trademark and Patent Office as an abstract colour brand for body and beauty care products, the same is not given protection as a colour mark in India but is entitled to protection judicially as a trade dress under the common law remedies available against passing off.