

BEAUTY AND THE BRAND: NAVIGATING INTELLECTUAL PROPERTY IN THE COSMETIC INDUSTRY

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INTRODUCTION

Intellectual property (“IP”) has proven to be an invaluable asset in all industries since it promotes innovation and creativity by protecting innovative technologies and creative works. IP rights drive economic growth by generating revenue through licensing and attracting investment. They assist companies in differentiating their products, providing brand loyalty, and ensuring fair competition through legal protection against infringement. By protecting inventions, IP promotes skilled talent and improves product and service quality. International IP Treaties encourage expansion into new markets while reducing the likelihood of IP theft. IP protection strengthens consumer trust in the authenticity and quality of products. In other words, intellectual property rights are necessary for the development of inventions and economic progress, ensuring fair competition and maintaining high standards, and thus paving the way for progress and prosperity in the world economy.

SIGNIFICANCE OF INTELLECTUAL PROPERTY RIGHTS IN THE COSMETIC INDUSTRY

The term “cosmetic” has been defined by the Drugs and Cosmetics Act, 1940 as “*any article intended to be rubbed, poured, sprinkled or sprayed on, or introduced into, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and includes any article intended for use as a component of cosmetic*”. It can be observed that this definition encompasses a wide range of products including, shampoos, serums, make-up articles, etc. The global cosmetics market is estimated to nearly double from \$378 billion in 2022 to \$661.12 billion by 2032. ¹India's market is projected to develop at a 25% CAGR, reaching \$20 billion by 2025.

The cosmetics industry is a dynamic one with new products being launched almost every day. This is why creativity, innovation, and brand identity are highly valuable in this industry. Intellectual property (IP) rights are crucial for protecting unique creations and competitive advantages of businesses in this sector. For instance, for any newly launched beauty product, the appeal comes from a complex set of intellectual property rights like patents, trademarks, copyrights, designs, and trade secrets that work together to ensure its uniqueness, high quality, and authenticity. This not only enables customer attraction but also safeguards the brands from impersonation and infringement. The various ways in which Intellectual Property provides protection to cosmetic brands includes-

1. Patents

Patent in an invention grants the inventor the exclusive right of commercial exploitation of the product which encourages and promotes innovations. Every year, major cosmetic companies introduce a wide range of products. Cosmetic brands seek to introduce products with scientific claims, which significantly improves their marketability. Cosmetic giants invest heavily in the research, development, and formulation of these products. This has driven the growth of cosmetic patents, which seek to protect the formulation, research, and development of cosmetic products. Patents may be granted for groundbreaking skincare ingredients, advanced anti-aging compounds, or new sun

¹ McKinsey & Company, The Beauty Market in 2023: A Special State of Fashion Report, (Aug. 04, 2024, 6:30 PM), <https://www.mckinsey.com/industries/retail/our-insights/the-beauty-market-in-2023-a-special-state-of-fashion-report> (discussing E-commerce in beauty has quadrupled between 2015-22).

protection solutions. Products that have patents or are patent-pending give an edge to the product over the other products in the market because they serve as a guarantee of its quality. For example, the brand Minimalist has come up with a patent-pending hair serum that has a combination of Maleic Acid, Transglutaminase & Amino Acids which helps in repairing damaged hair. The use of the term 'patent-pending' assures consumers of the novelty and quality of the product. Under the Patents Act, 1970, cosmetic treatments which do not have any therapeutic effect i.e. does not cure any disease in any way, may be patentable.

2. Trademark

A trademark is any word, sign, symbol, etc. that helps the customer to recognize a product and associate with its brand. For example, L'oreal, NIVEA, Mamaearth, etc. Trademarks facilitate brand recognition and brand loyalty which creates a loyal customer base. Cosmetic products come into contact with the human body, and the prevalence of counterfeit cosmetics poses a significant health risk. Fake products adversely impact trademark owners through intellectual property theft and trademark dilution, but it also poses a serious risk to physical health since it contains harmful elements. The widespread availability of such products undermines one of the principles of trademark law, which is to enable consumers to identify and trust the sources of products.

In the case of *Blue Heaven Cosmetics (P) Ltd. v. Anish Jain*², the Delhi High Court granted an *ex-parte ad-interim* injunction against the defendants for copying the packaging and the artwork of the plaintiff including the plaintiff's description of their products.

3. Copyright

Copyright is an exclusive right given to the owner of a work to prevent the unauthorized use of their work. Copyright subsists in an original work of authorship as soon as it is created. An original work of art on the packaging of a cosmetic product, or even an imprinted artwork on a cosmetic product may be copyrightable. Further, if the logo of the brand is artistic and creative, then even the logo may be copyrighted.

4. Trade Secrets

Trade secrets are anything that gives you an advantage against a competitor, is highly valuable and worth protecting. Trade secrets include R&D information, Software algorithms, inventions, designs, ingredients, devices, methods, etc. In the cosmetic industry, this can include formulas, manufacturing processes, and marketing strategies. Some well-known examples of trade secrets include Coca-Cola's Coke Syrup Formula, Google's Search Algorithm, etc. There is no specific Indian statute that regulates and protects trade secrets and confidential information. They are, however, protected on the basis of equity and common law.

5. Industrial Designs

Often known as design patents, Industrial designs protect the ornamental design of an article. In other words, design patents cover the decorative qualities of a product, such as a makeup brush, sponge, or applicator, or cosmetic container or packaging.

² 2023 SCC OnLine Del 8509.

CONTEMPORARY CHALLENGES FACED BY THE COSMETICS INDUSTRY IN TERMS OF THEIR INTELLECTUAL PROPERTY

The up-and-coming trend in the cosmetic market is that of ‘dupes’. Unlike counterfeits, dupes do not intend to deceive customers, but merely provide affordable cosmetics to the consumers. The dupes attempt to imitate colour, consistency or formula of high-end products but they don’t copy the packaging, logo or distinctive features, and thus, the law governing counterfeit products does not apply to dupes. Fragrances and shades of cosmetic products like lipsticks, nail polish, etc., are the most duped products. This is because the ‘fragrance’ or the ‘color’ of these products is the functional part of the product which makes them ineligible for protection under trademark law or patent law.

CONCLUSION

The importance of intellectual property protection and enforcement in the cosmetics industry cannot be overstated. With market size worth billions, cosmetics businesses must be more diligent than ever in preserving their intellectual property and maintaining their reputation. In recent years, the cosmetics industry has seen significant growth and innovation, driven by consumer demand for new and unique products. This innovation, however, is at risk due to the prevalence of counterfeit and imitation products, often referred to as ‘dupes’. Dupes mimic the appearance and branding of popular products, often at a fraction of the cost, but typically lack the same quality and safety standards. The focus of developments in intellectual property (IP) laws should be on tackling the issue of dupes. When these elements are not adequately protected, and such blatant copying continues, it not only harms the businesses that invested time and resources into developing the original products but also deceives consumers and can pose health risks due to potentially unsafe ingredients. Moreover, the unchecked proliferation of dupes undermines the motivation to create and innovate, which is counter to the social benefit theory underpinning intellectual property laws. This theory posits that IP protection encourages creativity and innovation by ensuring that creators can reap the rewards of their efforts, thereby benefiting society as a whole with new and improved products. To combat this issue, businesses must implement robust IP strategies, including trademark registration, patent filings for unique formulations and technologies, and vigilant enforcement against counterfeiters. Additionally, policymakers and industry stakeholders should collaborate to strengthen IP laws and improve enforcement mechanisms, ensuring that the legal framework keeps pace with the evolving challenges of the industry. By prioritizing the protection of intellectual property, the cosmetics industry can safeguard its innovations, maintain consumer trust, and continue to thrive in a highly competitive market.
