

TRADEMARK IN THE ERA OF SOCIAL MEDIA

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INTRODUCTION

Social media is the most used platform for any individual to express themselves. Due to this, the brand owners are getting immense opportunities to know and interact with their consumers and help them provide better services. However, with this emerging digital marketing world, there are certain problems attached with it. On one hand there is marketing benefit and extension of consumer base but on the other hand the misuse of these social networking sites is causing great harm to these proprietors as their name and mark can be easily misrepresented. Further, online imposters use well-known brands to pass off their products and thus get the benefit of free rider and damage the reputation of these well-known brands by supplying low quality products. The consumers or the people using the internet belong to every sector of the society and thus they can easily be confused by the fake usernames or accounts and end up buying the fake products. Therefore, the need for trademark protection of these usernames need to be there so that the reputation of brands be not hampered. This article would demonstrate the problems with lack of trademark protection laws for social media and sites and how such problems can be solved with efforts from both the brand owners and the networking sites.

PROTECTION OF TRADEMARK ON SOCIAL MEDIA

Social media has taken the world by swirl. Everybody no matter of what stature is found on the social networking websites. These social platforms have acquired specific motive and objective, some are for business purposes and provide platform to build formal corporate connections. We all know and are familiar with for example Facebook, Twitter, LinkedIn. As we see that they provide free membership and forming of account, the major earning of these networking services is from paid advertisements. They are approached by big brands and

advertise particular product, sports, restaurant, etc. This raises a lot of eyes for the issue related to trademark protection. There has been knowledge on that market about how the owner of a trademark can advertise and attract customers towards its brand but very less knowledge exists when it comes to protection of trademark on social media platform.ⁱ

Social media is a term used in common parlance, it is a platform which provides web-based technology to share owner created content and information. It is different from conventional media where in limited links provided information to the general public whereas in social media it is a two way process the public provides and consumes the information. In the recent years the number of user and log in accounts have increased highly in number and figures suggest average on each big social platform there exist more than 50 million users. The services allow one to post content on the platform on any topic in any manner with no over watch on them which can be viewed by public at large and is accessible to them, by them.

Where Trademark Issues Arise

Social networking provides for many benefits but on the other side they are a playground for trademark infringement. The use of what we call “vanity” URL has come into picture. These are URL which are short in nature and direct to content that is crisp and precise in the subsection of the domain URL. For example, a vanity URL can be made by anyone anonymously and use the trademark of others infringing the right of the trademark owner. There is no question when a trademark owner uses content approved by it, manages the web page but problem is when the above situation arises. No identification, authentication by the owner or so is required that could stop anyone from creating a website age using the “vanity” URL that could contain trademark infringing material.ⁱⁱ Anybody can create a group or upload images to be used.

Trademark abuses/ infringement and domain name cybersquatting are protected with profound legal remedies for resolving issues whereas social media issues related to trademark are giving birth to legal procedures and remedies for the same. It is known that the forms of trademarks are in variety, some country may recognize smell mark while others won't, while some may allow unauthorized use in name of commercial use in its nature. Let us take an example where in an online social networking web page consist of a brand name which if famous, has a the outer look which seems official, and put forth a corporate logo, now if the such a page is run

by someone else than the trademark owner then the issue of trademark arises as it will have a lot of praise for the branded products from certain store for purchasing by the customers. The quality of the products can be questionable, inferior in nature, or let's say counterfeited. The page can include advertisement of other brands and products and sponsors offered with the logo of the corporate which can be deceiving for people and amounts to infringement. Such a scenario can create hindrances for the trademark owner which has certain goodwill and value in the market and has acquired distinctiveness in all these year, he also would not like to be associated with products which are inferior in quality or are counterfeited. Social media and networking platforms disseminate unchecked information that may be harmful for trademark owner.

Traditional and Progressive Approaches to Resolving Trademark Issues

With time the issues of trademark that are coming are new and novel. There has been a shift in approach to address different types of trademark issues arising in the contemporary time. According to the traditional approach the trademark owner will send a notice to the page owner of the social network page which could be a cease and desist letter in nature. This is the right legal approach adapted by the trademark owner whose rights are being infringed by the social page where there is wrongful, commercial use of the trademark. More effective is that the websites own policy can be challenged and a complain can be launched if there is no commercial use .

There may be cases where in a trademark owner wishes to take control over the infringing social networking page. In the recent time there exist in example with LinkedIn which permits ownership and control of LinkedIn groups so created by the trademark owners to establish policies after gaining control of the group. The owners of the trademark can frame policies wherein the commercial use of mark is void, posting such material or content which can tarnish the mark or hamper the goodwill of the trademark. The owner of the trademark can also bar the visitor from use of the website on the failure of policy compliance. The traditional approach can cost heavy if the unauthorized party is a hard-core fan of the products of the trademark owner and forms a part of the large fan group. The very same social networking tools that were used to champion the trademark owner's products might be used to lead an anti-owner campaign.

In situation like this there arises the need to change the approach in resolving the infringing issue. This includes sending notice to the website operator but a friendly notice stating that one can continue the use of trademark but in a controlled way. This approach is in a way a form of partnership with the social networking operator and giving permission to utilise the mark in lieu of the policies of the trademark owner. The trademark owner can differentiate the operator from the trademark owner, to provide a hyperlink on the infringing website of the official web page of the trademark owner. In circumstances the trademark owner may want that not more than a reasonable necessary part be depicted on the infringing website to prohibit any third party from using the logo or the trademark. In more friendly and highly collaborative reproach the owner of the trademark can facilitate the modus operandi of the operator of social network.ⁱⁱⁱ The collaboration may provide with incentives and benefits to the operator when complying with the policies and request of the legit trademark owner.

Social Media Strategy

There should be preventive and corrective steps taken by the trademark owners to prevent, avoid, limit the use of unauthorised use of the trademarks. Preventive steps should be taken from the very first step of getting the trademark registered. For example, standard operating procedures should include not only clearance and federal registration for new trademarks, but also registration of domain names corresponding to new/proposed trademarks (including exact matches and variants), registration of new trademarks as usernames/vanity URLs with selected social networking websites, and establishment of brand-specific social media groups and dedicated social media pages.^{iv}

BRANDJACKING ON SOCIAL MEDIA

Almost every individual with an Internet connection is spending a lot of their time on social media sites such as Facebook, Instagram and Twitter. Due to this enormous usage of social media by the consumers, brand owners are targeting these sites in order to advertise their brands to the consumers. Most of their marketing strategy is directed towards these social media sites. These brands operate their own account in order to advertise and review complaints with regards to their brand. Such usage increases their brand value and reputation of their trademark. The interaction of these brands with the consumers on social network is in turn increases the

sale of their goods and services. For example, Coca Cola being a major brands resorts to social media to accounts such as Twitter provides facts about the Company and also support various other avenues such as sports and clean environment programmes etc. in order to attract customer attention.^v

Social media sites have transformed the traditional methods of marketing brands. It has also provided the brand owners the opportunity to analyse the consumer behaviours and preferences. The consumers or users of social networking sites have option to edit who can their content and information. Thus if a consumer allows any brand to access its information it means that the consumer prefers that brand and thus the brand owners can easily identify their consumer.^{vi} When the names of famous brand names are used as handles, then the consumers are confused as to whether the handle belongs to the brand or it's just some fake account. Also, if the words such as official and real are used then people will believe that they are the actual accounts of the brand. Further, to make the account look more real, the imposters usually use information from the actual website or social networking sites of the brand in order to confuse the consumers.

Trademark holders go to a great extent to establish reputation and goodwill for their brands but because of imposters on social media the brand has to face a lot of criticism and backlash. The impersonation creates great harm to the consumers as well as the users provide their personal information to these imposters thinking them to be the actual brands which usually leads to identity theft and spams. The consumers suffer no financial loss but their privacy is being affected as they send personal photos and other information to these brands. The consumers make buy low quality products from fake brands thinking them to be the actual brands thus to some extent suffer financial loss as well.^{vii} Wrong information about the company posted by the fake accounts harm the consumers as well as the brand as its goodwill is being targeted. The worst scenario is it is very difficult to bring cause action against such usage by fake accounts.^{viii}

The concept of username squatting has made serious harm to the trademark proprietors. To prevent this, the networking sites are making enormous efforts by registering their own specific marks on Facebook and Twitter sites. However, the registration process is very long and consumes a lot of money of the trademark holders. The brand also needs to regularly update

their account which again consumes a lot of resources. The social networking sites are increasing on a daily basis and with the emergence of number of social networking sites it is very difficult for the trademark holders to keep track of these sites and protect their rights on each and every media platform. There is no remedy available against username squatting and thus the trademark holders are at a loss and thus it is very easy for people to impersonate brands and earn huge amount of money.^{ix}

CONCLUSION

The emergence of social networking platforms has led to creation of various methods through a trademark can be utilised and also abused. Due to this, the traditional law of trademark is being hampered. However, the brand proprietors are getting a lot many opportunities to market their brand using social media platform. Not only the brand owners are benefitted, there many other ways through which trademarks are being used such as on fan sites, brand related discussions, etc. The consumer is also getting an upper hand due to social media as it provides the consumer a voice to speak about their brand preferences on media and also disregard the brands which are not good and thus affecting the brand value. The social media wave has made consumers actively participating in the creation of brand. However, this is problem as now the individual interest of the trademarks' owners are been compromised with public interest as there comes the right of freedom of expression. Trademark rights are restricted to the use during trade as well as use as a trademark. But this new mechanism of social media platform is a very new concept which would take a lot of time to adopt. The protection of trademarks rights is insufficiently explored as to whether such protection is available on social media as well. The trademark protection should be more exclusive in its application to various areas of its usage so that the trademark owners can be benefitted. Further, he brands owners have the right to protect their brand on which way their brand is being utilised. However, the trademark owners are short on knowledge that whether the usage of their mark on usernames and hash tags are protected or not as it is now very common to use trademarks in these ways. Further, the problem with enforcement of trademark rights is that there is huge rick involved related to negativity on the media and backlash by the consumers and also the most important is inability to identify the infringer and initiate a suit. Even if there are complaint filed for these infringements, the

damages or remedy availed to the trademark holders is very low and does no good to the damaged goodwill or reputation as it is very difficult to calculate the actual loss. Since there is no specific limit in the law of trademark with respect to its usage, there can be other ways through which trademark be protected on social behind that is by including such usage under the category of unfair advantage and using mark without any due cause.

The definition or application of trademark law has to be widened so that it can accommodate the trademark owners' interest in the new and changing digital world and the emergence of trademark in usernames and hash tags. Moreover, the social media also has to show corporation on their behalf in order to implement the protection of trademark laws. For example, Facebook and Twitter already has certain policies with regards to trademark infringement but still there needs to be more protection which needs to be provided to the trademark holders. The social media sites also need to update their software so as there is no fake identities and protection be availed to trademark owners.

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