



BEYOND LOGOS: THE RISE OF SOUND MARKS IN INDIA

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Imagine you are sitting on Himalayan hills and you are listening to a bamboo flute, its notes weaving through the cool breeze, mingling with the gentle chirping of birds, thereafter whenever you listen to this, you remember the peace and serenity that you experienced on this mountain peak with cool breeze and birds chirping [1]. So, the power of music and sound is immense. It goes much beyond just an auditory experience having power to transcend into much more personal experience. Now in modern world, walking into a store and hearing a short, familiar tune that instantly reminds you of a brand even before you see its logo or product. That moment of recognition is the power of a sound mark. In today's competitive marketplace, companies are no longer relying solely on visual trademarks, they are harnessing the psychological impact of sound to build stronger connections with consumers. From the Intel's chime to a Netflix's opener tune echoing from the person sitting next to you in a train, sound marks have become an integral part of modern branding. In today's fast-paced consumer world where attention spans are shrinking, brands are constantly searching for ways to stand out and leave lasting impressions. While logos, colours, and slogans have long been the identity, sound has emerged as a powerful and often underestimated tool.

In India, sound marks had been registered even prior to 2017, but they gained prominence majorly with the introduction of the Trade Marks Rules, 2017 which allowed the registration of sound trademark. This development marked a change in trademark law recognizing sound as a form of intellectual property protection. It empowered businesses to use distinctive audio signatures to identify their products or services, ensuring that a brand could be not only seen but also heard and experienced. To understand its role more clearly, it is important to first understand what a sound mark actually is and how it functions in practice.

[1] The article reflects the general work of the author on the date of publication and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice



Meaning of Sound Marks-

A sound mark is a trademark where sound is used to identify and distinguish a product or service from others. Sound marks are effective in creating a memorable association between a sound and a brand. It helps consumers to quickly recognize the commercial origin of goods or services. They go beyond advertising and become a part of regular routine. The reports suggests that over 150 sound marks have been registered in India, but the awareness is low. Some of the earlier sound marks registered in India are Yahoo's yodel sound, ICICI Bank's Corporate jingle, Nokia's tune. Recently, Indian Hotels Company Limited (IHCL) has secured sound mark registration for the "Taj" brand in hospitality.

Legal framework and Procedure in India-

The Trade Marks Act, 1999 does not define sound mark. However, Section 2 (1)(zb) defines trademark as a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others[2] and in this context, Rule 2 (1)(k) of the Trade Marks Rules 2017, defines graphical representation as the representation of a trademark for goods or services represented or capable of being represented in paper form and includes representation in digitised form[3].

Building on this legal foundation, the procedure for registration of sound marks is laid down in Rule 26(5) of the Trade Marks Rules 2017[4]

To apply for a sound mark in India, applicant must -

1. indicate in the application that the mark is a sound mark.
2. provide the reproduction of the sound in MP3 format, not exceeding 30 seconds, recorded on a medium which allows for easy and clearly audible replaying.
3. include a graphical representation of its notations.

Once registered, a sound mark enjoys the same statutory protection as other trademarks, including exclusive rights of use and enforcement against infringement.

[2] Section 2(1)(zb) of the Trade Marks Act 1999

[3] Rule 2(1)(k) of the Trade Marks Rules 2017

[4] Rule 26(5) of the Trade Marks Rules, 2017

Essential elements-

While understanding the essential elements of sound mark registration, we refer to the recent Reply to the Examination Report[5] filed in Taj's sound mark application against a Section 9(1)(a) objection, the Applicant demonstrated the essential elements of a sound mark in the following manner-

“The subject sound mark is a short harmonic chime, composed to evoke serenity, luxury, and warmth-qualities that resonate deeply with the expectations of guests in the hospitality sector. Unlike common ringtones or generic musical phrases, the subject sound mark is:

- Not functional, i.e., not used for announcements or operational cues.
- Not customary in the industry or descriptive of any service feature.
- Designed with distinctive tonal characteristics to create a strong audio identity. In this context, the subject sound is inherently capable of functioning as a source identifier.”

Prerequisite of registering the audio as a sound mark -

To register audio as a sound mark, it is essential to establish clear ownership and rights over the audio before filing the application.

The applicant must ensure that all intellectual property rights in the audio are duly assigned by the original creator, music composer, lyricists, artists or any other rights holder to the Applicant. It is recommended to execute an Assignment of IPR Agreement, which transfers the rights from the above-mentioned parties to the applicant. This is necessary to avoid disputes in the future. Execution of this agreement ensures that the applicant has legal standing to protect the audio as a trademark, preventing challenges from third parties or anybody from the creative team and safeguarding the distinctiveness of the sound in commerce.

[5] Application no. 6962095 Reply to Examination Report

Benefits of registering a sound mark-

1. Brand identity :

a. Sounds play an important role in strengthening brand identity by instantly reminding consumers of the brand and appealing to the auditory senses by creating a psychological and emotional connection with consumers. Unlike logos or colours, which rely on visual cues, a sound mark creates an immediate connection through hearing. When a distinctive sound is consistently used whether it's a jingle, a chime, or a unique tone it becomes inseparable from the brand itself. Over time, consumers begin to associate that sound with the brand's values, products, and experiences, often recognizing it even before seeing the company's name or logo. For example, the moment audiences hear Netflix's sound, they anticipate entertainment and quality content.

2. Competitive advantage:

a. Registering a sound mark increases a company's competitive edge because it transforms a simple audio cue into a legally protected brand asset that competitors cannot imitate. In crowded markets where visual branding may overlaps, a distinctive sound allows a business to stand out which occupies a permanent place in consumers' mind.

One challenge in registering sound marks is proving distinctiveness under Section 9(1) (a) of the Trade Marks Act, 1999 that requires a mark to be distinctive. For sound marks, this means the sound must be capable of uniquely identifying the source of goods or services. Although the Trade Marks Act, 1999 does not define "distinctive" in practice this means that a sound must go beyond being ordinary or commonplace. A simple beep or generic sounds like doorbells or ringtones are considered trivial to serve as source identifiers. The difficulty lies in proving that a sound has either inherent distinctiveness or has acquired distinctiveness through use. In *Shield Mark BV vs. Joost Kist h.o.d.n. Memex*, Case C-283/01[6], EU landmark judgement,

[6] *Shield Mark BV vs. Joost kist h.o.d.n. Memex*

it observed that the requirements for registrations are that sound signs must be capable of being regarded as trademarks provided that they are capable of distinguishing the goods or services of one undertaking from those of other undertakings and are capable of being represented graphically.



Sound marks represent a powerful evolution in the world of trademarks, moving beyond the visual realm into the auditory space where emotions and memory are deeply engaged. In India, the recognition of sound marks under the Trade Marks Rules, 2017 has opened new avenues for businesses to create distinctive brand identities that resonate instantly with consumers. By protecting unique audio cues whether a tune, chime, or tone companies can secure a lasting competitive advantage and strengthen their emotional bond with audiences. The success of iconic sound marks like Yahoo's yodel, Nokia's tune, and Netflix's opener demonstrates how a few seconds of sound can achieve what words or visuals sometimes cannot. As markets grow increasingly crowded, sound marks offer brands a way to cut through the noise by embedding themselves into the daily lives of consumers.

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