

PARLIAMENT OF INDIA

RAJYA SABHA

DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON COMMERCE

EIGHTY FOURTH REPORT

ON

TRADE MARKS (AMENDMENT) BILL, 2007

(PRESENTED TO THE RAJYA SABHA ON THE 19TH MARCH 2008)

(LAID ON THE TABLE OF THE LOK SABHA ON THE 19TH MARCH 2008)

RAJYA SABHA SECRETARIAT
NEW DELHI

MARCH, 2008/ 19, 1929 (SAKA)

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**DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON
COMMERCE
(Constituted on 5th August, 2007)**

1. Dr. Murli Manohar Joshi — *Chairman*

RAJYA SABHA

2. Shri Thennala G. Balakrishna Pillai
3. Shri Jai Parkash Aggarwal
4. Dr. K. Keshava Rao
5. Shri Arun Jaitley
6. Shri Banwari Lal Kanchhal
7. Shri Mohammed Amin
8. Shri Rajkumar Dhoot
9. Shri Dinesh Trivedi
10. Shri Robert Kharshiing

LOK SABHA

11. Shri Omar Abdullah
12. Shri C.K. Chandrappan
13. Shri D.V. Sadananda Gowda
14. Shri Radhey Shyam Kori
15. Shri N.N. Krishnadas
16. Shri Manjunath Kunnur
17. Shri Jivabhai A. Patel
18. Shri Virchandra Paswan
19. Shri Shishupal N. Patle
20. Shri E. Ponnuswamy
21. Shri Gingee N. Ramachandran
22. Shri Kashiram Rana
23. Shri Haribhau Rathod
24. Shri Sippiparai Ravichandran
25. Shri S.P.Y. Reddy
26. Shri Nikhilananda Sar
27. Shri Bharatsinh Madhavsinh Solanki
28. Shri Sarvananda Sonowal
29. Shri Braja Kishore Tripathy
30. Shri Balashowry Vallabhaneni
31. #Shri T.K. Hamza

SECRETARIAT

Shri Ravi Kant Chopra, JS & FA
Shri Surinder Kumar Watts, Director
Shri M.K. Khan, Deputy Director
Smt. Indira Chaturvedi Vaidya, Committee Officer
Nominated w.e.f 12th December, 2007

REPORT

1. I, the Chairman of the Department Related Parliamentary Standing Committee on Commerce, having been authorised by the Committee to present the Report on its behalf, do hereby present this Eighty Fourth Report of the Committee on the Trade Marks (Amendment) Bill, 2007.

2. In pursuance of the rules relating to Department Related Parliamentary Standing Committees, the Chairman, Rajya Sabha, in consultation with the Speaker, Lok Sabha, referred* The Trademarks (Amendment) Bill, 2007**, as introduced in the Lok Sabha on the 23rd August, 2007, and pending in that House, to the Committee for examination and report within three months, i.e. by 31st December, 2007. However, an extension of time for a further period of three months, i.e. upto 31st March, 2008 was granted by the Hon'ble Chairman, Rajya Sabha, for presentation of the aforesaid report by the Committee.

3. The Committee, at its sitting held on the 10th October, 2007 decided that a Press Release, inviting views/suggestions from various individuals, organisations etc., interested in or having knowledge of the subject matter of the Bill, may be issued. Accordingly, a Press Release was issued on the 10th October, 2007 (Appendix-I).

4. Eleven memoranda, containing the views, comments and suggestions on various provisions of the Bill, were received by the Committee from different individuals, organisations and associations (Appendix II).

* Rajya Sabha Parliamentary Bulletin Part-II 44503 dated the 1st October, 2007

** Published in the Gazette of India Extraordinary Part-II dated the 23rd August, 2007.

5. The Committee, at its sitting held on the 18th December, 2007, considered the information on the subject received from the Department of Industrial Policy and Promotion and also heard a presentation by the Secretary and other officials of that Department.

6. At its sitting held on 19th December, 2007, the Committee heard the views of the representatives of PRS Legislative Research, Centre for Policy Research, K&S Partners, (Formerly, Kumaran & Sagar), and Shri Ajay Sahani, Advocate, New Delhi, on various provisions of the Bill. Again, on the 28th December, 2007, the Committee heard the views of Shri Praveen Anand, Advocate, New Delhi, Shri Anil Kumar Aggarwal, Advocate, Chandigarh and Shri Anil Kumar Gupta, Advocate, Agra.

7. The Committee, at its sittings held on the 31st January and 1st February, 2008 took up clause-by-clause consideration of the Bill.

8. The Committee considered the draft Report at its sitting held on 17th March, 2008 and adopted the same, with some changes.

9. The main changes suggested by the Committee in the Bill are set out in the succeeding paragraphs.

Clause 2

Sub clause 1 of Clause 2 seeks to amend Section 21 of the Act viz. "Opposition to registration". This Section prescribes three months, plus one month (on request), to file opposition to an application. The present Bill proposes three months period only. The stated purpose of this change is to do away with the discretionary power of the Registrar to extend time limit by one month as well as to reduce the time limit for filing opposition. While the Committee agrees to do away with the discretionary power of the Registrar, it feels that **the period of four months, instead of three months, should be retained to file an opposition to registration.**

Clause 3

This clause seeks to amend Section 23 of the Act relating to Registration and proposes to prescribe a period of eighteen months, in Sub-section (1) of this Section, for disposing of a domestic application for a trade mark. Till now there was no such provision. This period of 18 months is prescribed in the Madrid Protocol.

The Committee feels that the Trade Marks Registry in the country is not adequately equipped to cope with the mandate of issuing certificates of registration within the stipulated period of 18 months due to constraints of manpower, infrastructure, etc. Apparently, it is for this reason that the provision of “deemed registration”, corresponding to a similar provision in respect of international registration vide the new proposed Section 36E (5), has not been made.

The Committee recommend that the proposed amendment to Section 23 should not come into force till the Trade Marks Registry is sufficiently and adequately equipped to dispose of both the domestic and the

international applications within the stipulated period of 18 months from the filing of such applications.

Clause 4

Clause 4 seeks to insert a new Chapter IV A, after Chapter IV, captioned “Special Provisions Relating to Protection of Trade Marks Through International Registration Under The Madrid Protocol”.

(i) New Section 36 B

The proposed new Section 36 B contains definitions and interpretation. Clause (a) of this section, which defines “application”, refers *inter-alia* to a person who has a “real and effective industrial or commercial establishment”. This term has been taken from Article 3 of the Paris Convention. The Committee deliberated upon the need for using the words “real and effective”, in the context of an industrial or commercial establishment and was of the view that in the absence of any laid down criteria/parameters, it may be difficult to determine whether an establishment was “real and

effective”. Therefore, **the expression ‘real and effective’ needs to be appropriately defined in the rules.**

(ii) New Section 36 D (4)

The proposed new Section 36 D deals with “International applications originating from India”. Under Sub-section (4) of this Section, the Registrar in India is required to forward an international application, originating from India, after completing verification formalities, “as soon as may be”, to the International Bureau. Under the Madrid Protocol, this procedure is to be completed within a period of two months. **The Committee recommend that the words “as soon as may be” may be substituted by the words “within the prescribed time limit”, and, in this context, a time-limit of two months should be provided in the Rules.**

(iii) New Section 36 E

The proposed new Section 36 E deals with “International registrations where India has been designated”.

The words “without any delay” occurring in Sub-section (3) of the new Section 36 E are vague and open to differing interpretations. **The Committee recommend that these words may be substituted by the words “within the prescribed time-limit” and the time-limit in this context may be provided in the rules.**

Sub-section (5) of this Section specifies the circumstances under which the Registrar shall notify the International Bureau its acceptance of extension of protection of the trade mark within a period of eighteen months. The said Sub-section also provides for “deemed extension of protection” in case of failure on the part of the Registrar to so notify the International Bureau.

The Committee reiterate its observations in respect of Clause 3 and **recommend that the Government should not accede to the Madrid Protocol, till the Trade Marks**

Registry is equipped with adequate, skilled manpower and requisite infrastructure and enabled to handle the pressure of dealing with trade mark applications, both domestic and international, within a period of eighteen months.

(iv) New Section 36 G

The proposed new Section 36 G deals with “Duration and renewal of international registration”. Under this Section, a person seeking an extension of international registration of a trade mark at the International Bureau is not given the benefit of grace period of six months, as is available under Section 25 of the Trade Marks Act, 1999 or under Article 7(4) of the Madrid Protocol. **The Committee recommend that a suitable provision to this effect should be inserted in this Section.**

(v) Insertion of new Section 36 H

The Committee feels that for international registration of trade marks to have any meaning or credibility, there should

be no quantitative or qualitative differences, in goods and services being sold under the same trade mark, in different Contracting Parties, unless such differences are occasioned by natural causes or the laws of a Contracting Party. **The Committee, therefore, recommend that the following new Section may be inserted after Section 36 G:-**

Uniformity of standards

36H. A holder of international registration of a trade mark, who is entitled to the protection of that trade mark in India and any other Contracting Party shall apply, as far as possible, the same trade description as to the standard of quality of its goods or services in all the Contracting Parties granting the protection. No alteration in the said trade description in a material respect shall be permissible in any Contracting Party, unless required by its laws.

Clause 5

This clause seeks to omit Sections 40, 41 and 42 of the Principal Act, which deal with assignment where multiple rights are created; assignment when exclusive rights would

be created in different parts of India; and assignment of trade mark without the goodwill of business. This amendment was intended to bring forth a law, in line with the laws of the countries like Australia, U.K and some other European countries. The Committee is of the view that this clause seemed only to facilitate foreign players to use the domestic market as “one market”. There was no rationale for omission of Sections 40, 41 & 42. Moreover, it has got nothing to do with the Madrid Protocol. **The Committee, therefore, recommend that Sections 40, 41 & 42 of the Principal Act should be retained and, in consequence, Clause 5 should be deleted.**

Clause 6

This Clause seeks to substitute the existing Section 45 with a new Section, providing for “Registration of assignments and transmissions”. Sub-section (4) of this new Section provides for effectiveness of an assignment or transmission. **The Committee feels that the use of word “made” in the context of an application is not**

appropriate and should be substituted by the word “filed”.

Further, there is a need to make a specific provision regarding effectiveness of the assignment or transmission against a person acquiring a conflicting interest in or under the registered trademark. According to one view, if one is not on the register, there can be no infringement by him, meaning thereby that a person to whom the trade mark has been sold or assigned, will have no right to initiate infringement proceedings based on the registration, unless he gets his name on the register. The other view is that putting the name on the register is only an administrative act. The moment one executes an agreement, the rights are transferred. To remove this ambiguity, **the Committee recommend that the words “without the knowledge of assignment or transmission” may be added, after the words “trade mark”.**

Clause 9

In view of the Committee's recommendation in respect of Clause 5, Sub Clause (c) of this Clause has become redundant. **The Sub Clause (c) of Clause 9 may, therefore, be deleted.** This is a consequential change.

Clause I, Enacting Formula and Title

Clause I, Enacting Formula and the Title of the Bill were adopted with some changes which were of consequential or drafting nature, namely, '2007' and 'fifty-eighth' to be substituted by '2008' and 'fifty-ninth', respectively. These amendments were necessitated due to passage of time.

10. The Committee recommend that the Bill, as reported by it, be passed.

NEW DELHI
MARCH 17, 2008

*Dr. MURLI MANOHAR
JOSHI*
Chairman
Department Related
Parliamentary Standing
Committee on Commerce

APPENDIX I
(Vide para 3 of the Report)

PRESS COMMUNIQUE

**THE STANDING COMMITTEE ON COMMERCE INVITES SUGGESTIONS
ON
TRADE MARKS (AMENDMENT), BILL, 2007**

The Trade Marks (Amendment) Bill, 2007, introduced in the Lok Sabha on the 23rd August, 2007 and pending therein, has been referred to the Department-related Parliamentary Standing Committee on Commerce, with **Dr. Murli Mahonar Joshi, Member, Rajya Sabha**, as its Chairman, for examination and report.

2. The Bill seeks to amend the Trade Marks Act, 1999 (hereinafter referred to as Trade Marks Act) with a view, *inter-alia* to:-

- (i) prescribe a period of 18 months for the registration of trade marks under Section 23 of the Trade Marks Act, in line with the provisions of the Madrid Protocol;
- (ii) incorporate a new Chapter IVA in the Trade Marks Act containing enabling provisions for accession to Madrid Protocol, including empowering the Registrar of Trade Marks to deal with international applications originating from India as well as those received from the International Bureau (single application with one fee and in one language) and maintain record of international registrations;
- (iii) reduce the time-period of filing a notice of opposition of published applications, from four months to three months, for speedy disposal of proceedings;
- (iv) simplify the law relating to transfer of ownership of trade marks by assignment or transmission and to bring the law generally in tune with international practice and modern business needs;

(v) omit chapter X of the Trade Marks Act, dealing with special provisions for textile goods, as it has become redundant.

3. The Committee has decided to invite memoranda containing views of the individuals/organizations, etc., interested in the subject-matter of the Bill and also to hear oral evidence on the subject.

4. Those desirous of submitting memoranda to the Committee may send two copies (either in English or Hindi) thereof to **Shri Surinder Kumar Watts, Director, Rajya Sabha Secretariat, Room No. 240, Second Floor, Parliament House Annexe, New Delhi (Tel: 23034240, Tele fax: 23013158, E-mail: watts@sansad.nic.in)** within fifteen days of publication of this advertisement, indicating whether they would also be interested in giving oral evidence before the Committee.

5. The memorandum submitted to the Committee would form part of the records of the Committee and would be treated as confidential and would not be circulated to anyone, as any act contrary thereto would constitute a breach of privilege of the Committee.

6. The Bill was published in the Gazette in India, Extraordinary, Part II, Section 2, dated the 23rd August, 2007. Its copies can be had on written request to the above-mentioned Officer or can be downloaded from the official web-site of the Lok Sabha (<http://loksabha.nic.in>), under the caption "Bills with the Committee".

New Delhi
10th October, 2007

APPENDIX II

List of Individuals/Organisations etc. from whom
Memoranda were received by the Committee

(Vide para 4 of the Report)

Sr. No	Name of the individual/organization	Address
1.	Shri Richard Baddeley	302, Burwood Road, Hawthorn Victoria 3122, Australia, Postal address: GPO Box 5093 Melbourne Victoria 3001, Australia
2.	Shri KVR Sridharan Advocate	Plot No. 139, 11 th Street, Second Sector KK. Nagar, Chennai-600078
3.	Arora Registration Service	1158, Bazar Old Kanak Mandi, Amritsar-143006
4.	Shri C.V. Madhukar, Director	PRS Legislative Research, Centre for Policy Research, Dharma Marg, Chanakyapuri New Delhi-110021
5.	Shri Luke Davies, First Secretary	Australian High Commission, New Delhi
6.	Shri Ashish K. Singh	K&S Partners, (Formerly, Kumaran & Sagar), 84-C, C-6 Lane, Sainik Farms, New Delhi-110062
7.	Shri Ashwin Julka	Remfry and Sagar, Millenium Plaza, Sector-27, Gurgaon-122002
8.	Dr. S. K. Marwah, Advocate	3290, Sector-24-D, Chandigarh-160023
9.	Ms. Shilpi Jha, Executive Officer	Confederation of Indian Industry, Plot No. 249-F, Sector-18, Phase-IV, Udyog Vihar, Gurgaon-122015
10.	Shri H. P. Singh, Advocate	H-7, Green Park Ext., New Delhi.
11.	Shri Krishna Sharan Mishra	1a & 2b, Abirami Beverly, New No.28, C.V.Raman Road, Alwarpet-Chennai-600 018

MINUTES

*VI
SIXTH MEETING

The Department Related Parliamentary Standing Committee on Commerce met at 11.00 A.M. on Tuesday, the 18th December, 2007, in Room No. '63', First Floor, Parliament House, New Delhi.

PRESENT

1. Dr. Murlī Manohar Joshi — *Chairman*

Rajya Sabha

2. Shri Mohammed Amin
3. Shri Rajkumar Dhoot
4. Shri Dinesh Trivedi
5. Shri Robert Kharshiing

LOK SABHA

6. Shri Omar Abdullah
7. Shri C.K. Chandrappan
8. Shri Radhey Shyam Kori
9. Shri N.N. Krishnadas
10. Shri Manjunath Kunnur
11. Shri Virchandra Paswan
12. Shri Shishupal N. Patle
13. Shri E. Ponnuswamy
14. Shri Kashiram Rana
15. Shri Haribhau Rathod
16. Shri Nikhilananda Sar
17. Shri Braja Kishore Tripathy
18. Shri T.K. Hamza

WITNESSES

REPRESENTATIVE OF LAWYERS COLLECTIVE HIV/AIDS UNIT

Mr. Anand Grover, Project Director

REPRESENTATIVE OF CAMPAIGN FOR ACCESS TO ESSENTIAL MEDICINES, NEW DELHI.

Ms. Leena Menghaney, Project Manager

*Minutes of 1st to 5th meetings of the Committee pertains to other matters.

REPRESENTATIVES OF DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION

Shri Ajay Shankar, Secretary
Shri N.N. Prasad, Joint Secretary
Shri M.S. Dhakad, Director
Shri T.C. James, Director
Shri V. Ravi, CGPDTM

MINISTRY OF LAW & JUSTICE

Dr. B. A. Agrawal, Additional Secretary
Shri N.K. Ambastha, Consultant
Smt. Sudha Rani, Deputy Legislative Counsel
Shri K. Sreemannaranayan, Assistant Legislative Counsel

SECRETARIAT

Shri V.K. Agnihotri, Secretary General
Shri Ravi Kant Chopra, JS & FA
Shri Surinder Kumar Watts, Director
Shri M.K. Khan, Deputy Director
Smt. Indira C. Vaidya, Committee Officer

2. The Chairman welcomed Shri T.K. Hamza, Member, Lok Sabha who had been nominated recently to the Committee and was attending his first meeting of the Committee.

3. The Chairman informed Members that the Trade Marks (Amendment) Bill, 2007 had been referred to the Committee on 1st October, 2007 by Hon'ble Chairman, Rajya Sabha, in consultation with the Speaker, Lok Sabha, for examination and report within three months. The said period would lapse on the 31st December, 2007. The Committee reviewed the progress of examination of the Bill and felt that the exercise was likely to take another three months, thereafter the report would be presented/laid in both the Houses. The Committee, therefore, decided to seek an extension of three months, for presentation of the Report to Parliament on the above Bill.

4. * * *

5. * * *

6. * * *

*** Pertains to other subject

7. * * *

A verbatim record of the evidence was kept.

8. The Committee adjourned at 3.15 p.m.

*** Pertains to other subject

VII
SEVENTH MEETING

The Department Related Parliamentary Standing Committee on Commerce met at 11.00 A.M. on Wednesday, the 19th December, 2007, in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Dr. Murli Manohar Joshi — *Chairman*

Rajya Sabha

2. Shri Thennala G. Balakrishna Pillai
3. Shri Mohammed Amin

LOK SABHA

4. Shri C.K. Chandrappan
5. Shri D. V. Sadananda Gowda
6. Shri Radhey Shyam Kori
7. Shri N.N. Krishnadas
8. Shri Manjunath Kunnur
9. Shri Shishupal N. Patle
10. Shri Gingee N. Ramachandran
11. Shri Kashiram Rana
12. Shri Haribhau Rathod
13. Shri Sippiparai Ravichandran
14. Shri S. P. Y Reddy
15. Shri Nikhilananda Sar
16. Shri Sarvananda Sonowal
17. Shri Braja Kishore Tripathy
18. Shri Balashowry Vallabhaneni

WITNESSES

Shri C.V. Madhukar, Director, PRS Legislative Research;
Dr. M. R. Madhvan, Sr. Fellow, PRS Legislative Research
Shri Ajay Sahni, Advocate; and
Mr. Kenneth D. Benjamin, Advocate, K&S Partners.

REPRESENTATIVES OF DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION

Shri M.S. Dhakad, Director
Shri T.C. James, Director,
Shri V. Ravi, CGPTDM

REPRESENTATIVES OF MINISTRY OF LAW & JUSTICE

Dr. B. A. Agrawal, Additional Secretary
Shri N.K. Ambastha, Consultant
Smt. Sudha Rani, Deputy Legislative Counsel
Shri K. Sreemannaranayan, Assistant Legislative Counsel

SECRETARIAT

Shri Ravi Kant Chopra, JS & FA
Shri Surinder Kumar Watts, Director
Shri M.K. Khan, Deputy Director
Smt. Indira C. Vaidya, Committee Officer

2. The Committee heard the views of above-mentioned witnesses on the Trade Marks (Amendment) Bill, 2007. Members sought some clarifications, which were replied to by the witnesses. The Chairman directed the witnesses to send their written replies in response to the queries, for which information was not readily available.

A verbatim record of the evidence was kept.

3. The Committee adjourned at 1.30 p.m.

VII
SEVENTH MEETING

The Department Related Parliamentary Standing Committee on Commerce met at 11.00 A.M. on Wednesday, the 28th December, 2007, in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Dr. Murlī Manohar Joshi — *Chairman*

Rajya Sabha

2. Shri Thennala G. Balakrishna Pillai
3. Dr. K. Keshava Rao
4. Shri Dinesh Trivedi
5. Shri J. P. Aggarwal

LOK SABHA

6. Shri N.N. Krishnadas
7. Shri Manjunath Kunnur
8. Shri Virchandra Paswan
9. Shri Shishupal N. Patle
10. Shri Kashiram Rana
11. Shri Sippiparai Ravichandran
12. Shri S. P. Y Reddy
13. Shri Nikhilananda Sar
14. Shri Braja Kishore Tripathy
15. Shri T. K. Hamza

WITNESSES

Shri Pravin Anand
Shri Anil Kumar Agarwal
Shri Anil Kumar Gupta

REPRESENTATIVES OF DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION

Shri V. Ravi, CGPTDM

Shri K.C. Kailasam, Ex. Senior Joint Registrar of Trade Marks
Shri B. K. Malhotra, Under Secretary

Shri N. J. Thomas, Under Secretary

REPRESENTATIVES OF MINISTRY OF LAW & JUSTICE

Dr. B. A. Agrawal, Additional Secretary
Shri N.K. Ambastha, Consultant
Smt. Sudha Rani, Deputy Legislative Counsel
Shri K. Sreemannarayanan, Assistant Legislative Counsel

SECRETARIAT

Shri Ravi Kant Chopra, JS & FA
Shri Surinder Kumar Watts, Director
Shri M.K. Khan, Deputy Director

2. The Committee heard the views of the witnesses on the Trade Marks (Amendment) Bill, 2007. Members sought some clarifications, which were replied to by the witnesses. The Chairman directed the witnesses to send their written replies in response to the queries, for which information was not readily available.
3. The Committee decided that the oral evidence of the members of the public on the Bill may be closed. The Chairman desired that the Department of Industrial Policy & Promotion may be asked to consolidate and tabulate submissions received in relation to each clause of the Bill, by way of written memoranda or oral evidence, and offer their views/comments thereon, latest by 22nd January, 2008, to enable the Committee to carry out a clause-by-clause examination of the Bill. The Chairman also requested Members to send their notices of amendment to the Bill, if any, by that date.
4. The Committee, after some discussion, decided that the meeting of the Committee to be held on 29th December, 2007 may be cancelled.

A verbatim record of the evidence was kept.
5. The Committee adjourned at 1.30 p.m.

*XI
ELEVENTH MEETING

The Department Related Parliamentary Standing Committee on Commerce met at 3.00 P.M. on Thursday, the 31st January, 2008, in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Dr. Murli Manohar Joshi — *Chairman*

Rajya Sabha

2. Shri Thennala G. Balakrishna Pillai
3. Dr. K. Keshava Rao
4. Shri Banwari Lal Kanchhal
5. Shri Mohammed Amin
6. Shri Dinesh Trivedi
7. Shri Robert Kharshiing

LOK SABHA

8. Shri N. N. Krishnadas
9. Shri Virchandra Paswan
10. Shri E. Ponnuswamy
11. Shri Kashiram Rana
12. Shri Sippiparai Ravichandran
13. Shri S. P. Y Reddy
14. Shri Nikhilananda Sar
15. Shri Bharatsinh Madhavsingh Solanki
16. Shri Braja Kishore Tripathy
17. Shri T. K. Hamza

REPRESENTATIVES OF DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION

Shri M. S. Dhakad, Director
Shri B. K. Malhotra, Under Secretary
Shri V. Ravi, C.G.P.D.T.M

*Minutes of 9th & 10th meetings of the Committee pertains to other matters.

REPRESENTATIVES OF MINISTRY OF LAW & JUSTICE

Dr. B. A. Agrawal, Additional Secretary
Shri N.K. Ambastha, Consultant
Smt. Sudha Rani, Deputy Legislative Counsel
Shri K. Sreemannaranayan, Assistant Legislative Counsel

SECRETARIAT

Shri Ravi Kant Chopra, JS & FA
Shri M.K. Khan, Deputy Director
Smt. Indira C. Vaidya, Committee Officer

2. The Chairman informed Members that Hon'ble Chairman had agreed to extend the period for presentation/laying of the Committee's Report on the Trade Marks (Amendment) Bill, 2007 upto 31st March, 2008.

3. The Committee then took up clause-by-clause consideration of the Bill and decided as follows:-

Clause 2

The period of four months, instead of three months, should be retained to file an opposition to registration.

Subject to the above change, Clause 2 was adopted.

Clause 3

The proposed amendment to Section 23 should not come into force till the Trade Marks Registry is sufficiently and adequately equipped to dispose of both the domestic and the international applications within the period of 18 months of filing of such applications.

Subject to the above, Clause 3 was adopted.

Clause 4

- i. New Section 36 B: the expression "real and effective" needs to be appropriately defined in the Rules.
- ii. New Section 36 D (4): the words "as soon as may be" may be substituted by the words "within the prescribed time limit". A time-limit of two months should be provided in this context in the Rules.
- iii. New Section 36 E (3): the words 'without any delay' may be substituted by the words 'within the prescribed time-limit'. This time-limit may be provided in the rules.

- iv. New Section 36 E (5): the Government should not accede to the Madrid Protocol, till the Trade Marks Registry is equipped with adequate skilled manpower and requisite infrastructure to be able to handle the pressure of dealing with trade mark applications, both domestic and international, within a period of eighteen months. .
- v. New Section 36 G: a person seeking an extension of international registration of a trade mark at the International Bureau be given the benefit of grace period of six months under this Section, as is available under Section 25 of the Trade Marks Act, 1999 or under Article 7(4) of the Madrid Protocol.
- vi. The following new Section 36 (H) be inserted:-

Uniformity of standards

36H. A holder of international registration of a trade mark, who is entitled to the protection of that trade mark in India and any other Contracting Party shall apply, as far as possible, the same trade description as to the standard of quality of its goods or services in all the Contracting Parties granting the protection. No alteration in the said trade description in a material respect shall be permissible in any Contracting Party, unless required by its law.

Subject to the above changes, clause 4 was adopted.

- 4. The consideration remained inconclusive and the Committee decided to further undertake clause-by-clause consideration of the Bill on the 1st February, 2008.

A verbatim record of the proceedings of the meeting was kept.

- 5. * * *
- 6. * * *
- 7. The Committee adjourned at 5.50 p.m.

*** Pertains to other subject

XII
TWELFTH MEETING

The Department Related Parliamentary Standing Committee on Commerce met at 11.00 A.M. on Friday, the 1st February, 2008, in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Dr. Murli Manohar Joshi — *Chairman*

Rajya Sabha

2. Shri Thennala G. Balakrishna Pillai
3. Shri Jai Parkash Aggarwal
4. Dr. K. Keshava Rao
5. Shri Banwari Lal Kanchhal
6. Shri Mohammed Amin
7. Shri Dinesh Trivedi

LOK SABHA

8. Shri Omar Abdullah
9. Shri C.K. Chandrappan
10. Shri Radhey Shyam Kori
11. Shri Virchandra Paswan
12. Shri Kashiram Rana
13. Shri Sippiparai Ravichandran
14. Shri S. P. Y Reddy
15. Shri Nikhilananda Sar
16. Shri Braja Kishore Tripathy

**REPRESENTATIVES OF DEPARTMENT OF INDUSTRIAL POLICY AND
PROMOTION**

Shri N.N. Prasad, Joint Secretary
Shri T.C. James, Director
Shri V. Ravi, C.G.P.D.T.M

REPRESENTATIVES OF MINISTRY OF LAW & JUSTICE

Dr. B. A. Agrawal, Additional Secretary
Shri N.K. Ambastha, Consultant
Smt. Sudha Rani, Deputy Legislative Counsel
Shri K. Sreemannaranayan, Assistant Legislative Counsel

SECRETARIAT

Shri Ravi Kant Chopra, JS & FA
Shri M.K. Khan, Deputy Director
Smt. Indira C. Vaidya, Committee Officer

2. The Committee resumed clause-by-clause consideration of the Trade Marks (Amendment) Bill, 2007 and decided as follows:-

Clause 5

Sections 40, 41 and 42 of the Principal Act be retained and in consequence, this clause be deleted.

Clause 6

Substituted Section 45 (4): the use of word "made" in the context of an application was not appropriate and should be substituted by the word "filed" and the words "without the knowledge of assignment or transmission" be added, after the words "trade mark".

Subject to the above changes, Clause 6 was adopted.

Clauses 7 and 8

These Clauses were adopted.

Clause 9

The provision "(c) Clauses (x) and (xi) shall be omitted"; be deleted consequent upon deletion of Clause 5 and the rest of Clause 9 was adopted.

Clause 10

This Clause was adopted.

Clause I, Enacting Formula and Title

"Clause I, Enacting Formula and the Title of the Bill were adopted with some changes which were of consequential or drafting nature, namely '2007' and 'fifty-eighth' to be substituted by '2008' and 'fifty-ninth', respectively, necessitated due to passage of time.

Statement of Objects and Reasons

Suitable changes be considered in the Statement of Objects and Reasons, specially in para 4 in view of Committee's recommendations in respect of Clauses 2 and 5.

3. The Committee decided to consider and adopt the draft Report on the Bill, at a date to be decided by the Chairman of the Committee

A verbatim record of the proceedings of the meeting was kept.

4. The Committee adjourned at 1.30 p.m.

XIII
THIRTEENTH MEETING

The Department Related Parliamentary Standing Committee on Commerce met at 3.00 P.M. on Monday, the 17th March, 2008, in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Dr. Murli Manohar Joshi — *Chairman*

Rajya Sabha

2. Shri Thennala G. Balakrishna Pillai
1. Dr. K. Keshava Rao
2. Shri Banwari Lal Kanchhal
3. Shri Mohammed Amin

LOK SABHA

4. Shri C.K. Chandrappan
5. Shri Virchandra Paswan
6. Shri Kashiram Rana
7. Shri Nikhilananda Sar
8. Shri Bharatsinh Madhavsinh Solanki
9. Shri Braja Kishore Tripathy

WITNESSES

REPRESENTATIVES OF DELHI EXPORTERS ASSOCIATION

Shri S .P. Aggarwal, President
Shri Tilak Raj Manaktala
Shri V.C. Jain
Shri Satish Rakyan
Shri S. K. Jain
Shri V.S. Goel

REPRESENTATIVES OF ASSOCHAM

Shri D. S. Rawat, Secretary General
Shri Abdul Khalique, Advisor

SECRETARIAT

Shri Ravi Kant Chopra, JS & FA
Shri Surinder Kumar Watts, Director
Shri M.K. Khan, Deputy Director
Smt. Indira C. Vaidya, Committee Officer

2. The Committee took up for consideration the draft Report on the Trade Marks (Amendment) Bill, 2007 and after some discussion, adopted the same with some changes, for presenting/laying in both the Houses. The Committee authorized the Chairman and in his absence, Dr. K. Keshava Rao and Shri Banwari Lal Kanchhal to present the report in Rajya Sabha and S/Shri Kashiram Rana and C.K. Chandrappan to lay the report in Lok Sabha.

3. * * *

4. A verbatim record of the evidence was kept.

5. The Committee adjourned at 5.55 p.m.

*** Pertains to other subject

