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AN EMPIRICAL ANALYSIS OF ‘SCANDALOUS’ AND ‘OBSCENE’ TRADE  
MARKS IN INDIA

M P RAM MOHAN,\* ADITYA GUPTA\*\* & VIJAY V. VENKITESH†

*The interaction between morality and law, particularly within the domain of intellectual property (IP), is fraught with complexities. This interplay becomes even more contentious when we consider ‘morality-based proscriptions’—explicit legislative carve-outs within IP law. These carve-outs are prevalent in trademark laws across 163 out of 164 WTO member states, highlighting their global significance. Previous academic studies have argued vagueness of these provisions, to the point of being potentially unconstitutional. Building on an earlier anecdotal and purposive study in the administration of these provisions within Indian law, this research constructs a novel dataset to scrutinize their implementation. Our dataset encompasses 1.6 million trademark examination reports filed between 2018 and 2022. Utilizing auto-coding techniques, we identified 140 applications that were objected to for containing scandalous or obscene material. A systematic analysis categorizes these objections into three distinct groups: those concurrently citing both relative and absolute grounds for refusal, instances where applicants successfully circumvented morality objections through ambiguity, and a notable absence of objections for potentially offensive marks. By providing empirical evidence, this study highlights the challenges inherent in the enforcement of these moral carve-outs, emphasizing the need for clearer guidelines and more consistent application.*

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*Keywords: trademarks; scandalous and obscene; intellectual property; empirical legal studies*

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## INTRODUCTION

Should a sexual-wellness company be allowed to use the image of a condom painted in a national flag as their trademark? Not only would the mark instigate abhorrence from the population of the country, it may also invoke prohibitory and criminal sanctions under the laws enacted to protect the dignity and sanctity of national symbols.<sup>1</sup> However, would this outrage pacify if the mark was supplanted with the phrase, “We believe it is our patriotic duty to protect and save lives . . . Join us in promoting safer sex. Help eliminate AIDS”?<sup>2</sup> This hypothetical is not a result

<sup>1</sup> See, e.g., The Prevention of Insults to National Honour Act, 1971, § 2 (India); The Emblems and Names (Prevention of Improper Use) Act, 1950, § 3 (India).

<sup>2</sup> The Indian population is no stranger to campaigns centered around the use of condoms. From government backed campaigns pitching condoms as a means to control population in the late 1960s, to compulsorily bundled distribution of condoms in the 1970s, the use of condoms has been a part of the Indian discourse for decades. See Sayantani Sur, *Family Planning and the Masculinity of Nirodh*

of the authors' overactive imagination. These were the facts of a dispute before the United States Patent and Trademark Office's Trademark Trial and Appeal Board (TTAB).

In 1989, Jay Critchley, an American artist and activist, artistically applied the United States Flag to a condom.<sup>3</sup> Through his work, he wanted to communicate his "belief that the use of condoms is a patriotic act."<sup>4</sup> The campaign was such a success that Critchley decided to incorporate his artwork in a marketing campaign titled "Condoms with a Conscience."<sup>5</sup> He adopted a modified version of his artwork as a trademark "in a manner to suggest the American Flag."<sup>6</sup> His application for the registration of the mark was initially denied under Section 2(a) of the American Trademark Act, 1946 (Lanham Act), which prohibited the registration of scandalous and immoral marks.<sup>7</sup> The United States Patents and Trademark Office (USPTO) adopted a *civil-religious* viewpoint, and argued that "the flag is a sacrosanct symbol whose association with condoms would necessarily give offense."<sup>8</sup> Critchley criticized the USPTO's decision: "Basically, what they're saying is that condoms are immoral and scandalous and anything to do with sex

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*Condoms in India*, in (Hi)STORIES OF DESIRE: SEXUALITIES AND CULTURE IN MODERN INDIA 134, 144–47 (Rajeev Kumaramkandath & Sanjay Srivastava eds., 2020); DINESH C. SHARMA, INDIAN INNOVATION, NOT JUGAAD—100 IDEAS THAT TRANSFORMED INDIA 53–54 (2022). While continuing to remain controversial, condoms have also played a part in the political campaigning in the Indian democracy. As recently as 2024, Indian political parties have used condom packets adorned in their party symbols as part of their campaigns. See *Lok Sabha Campaign Heats Up in Andhra Pradesh as Condoms with YSRCP, TDP Symbols Go Viral*, THE TIMES OF INDIA (Feb. 22, 2024, 8:09 PM), <https://timesofindia.indiatimes.com/india/lok-sabha-campaign-heats-up-in-andhra-pradesh-as-condoms-with-ysrcp-tdp-symbols-go-viral/articleshow/107919980.cms> [<https://perma.cc/W2KL-JQRK>].

<sup>3</sup> Robert F. Howe, *Condom Firm Prevails on Showing the Colors: Red, White and Blue Logo to Be Registered*, WASH. POST, Mar. 9, 1993, at A8.

<sup>4</sup> *Id.*

<sup>5</sup> For the unveiling of the marketing campaign, see Jay Critchley, *Transamerica – Condoms With a Conscience*, YOUTUBE (Jan. 24, 2014), <https://www.youtube.com/watch?v=qZwJ1gWqacc> [<https://perma.cc/2WEL-B6E5>].

<sup>6</sup> *In re Old Glory Condom Corp.*, 26 U.S.P.Q.2d 1216, 1993 WL 114384, at \*1 (T.T.A.B. 1993). See also Victor Castellucci, Case Note, *In Re Old Glory Condom Corp.*, 12 J. CONTEMP. LEGAL ISSUES 50, 50 (2001).

<sup>7</sup> 15 U.S.C. § 1052(a). In the United States Patents and Trademark Office (USPTO) examining attorney's initial rejection of the trademark registration, she stated, "Despite the admirable intent displayed in the applicant's desire to prevent the spread of sexually transmitted diseases, the majority of the public would still be offended by the use of the flag to promote items associated with sex." See Howe, *supra* note 3.

<sup>8</sup> *In re Old Glory Condom Corp.*, 26 U.S.P.Q.2d 1216 (T.T.A.B. 1993). See also MICHAEL WELCH, FLAG BURNING: MORAL PANIC AND THE CRIMINALIZATION OF PROTEST 89–90.

is dirty. It's really Neanderthal, the whole attitude."<sup>9</sup> He successfully appealed the USPTO's decision before the TTAB, securing the registration of his mark after a three year long legal battle.<sup>10</sup>

Jay Critchley's case is not an isolated one. Trademark registrations have become the most recent battleground for the reclaiming of identity and destigmatization of stereotypes. One of these attempts was recently reviewed by the United States (U.S.) Supreme Court when an Asian-American band sought to "reclaim" the term "Slants" by registering it as their trademark.<sup>11</sup> The all-Asian band made public appearances, participated in community outreach programs and even wrote a song to confirm their challenge of the racially charged slur.<sup>12</sup> The lyrics of the song read, "We sing for the Japanese/And the Chinese/And all the dirty knees/Do you see me?"<sup>13</sup> However, their attempt at registration was denied by the USPTO on the grounds of having adopted a disparaging mark.<sup>14</sup> After a characteristic David versus Goliath legal battle against the USPTO, the U.S. Supreme Court held that the bar against disparaging marks was in violation of the First Amendment, thus striking down the trademark provision and allowing the band to register its mark.<sup>15</sup>

These cases are some of the instances which showcase the potential overreach of morality-based proscriptions on the trademark subject matter. These issues become even more pronounced in cases where these proscriptions are administered inconsistently, providing trademark examiners with unbridled discretion. In a

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<sup>9</sup> WELCH, *supra* note 8.

<sup>10</sup> *In re Old Glory Condom Corp.*, 26 U.S.P.Q.2d 1216 (T.T.A.B. 1993).

<sup>11</sup> *Matal v. Tam*, 582 U.S. 218, 223 (2017). *See also* U.S. Trademark Application Serial No. 77/952,263 (filed Mar. 5, 2010). The band sought to reclaim the term, which was used as a derogatory term for persons of Asian descent, as the members of the band were Asian-American. The band members believed that by reclaiming the slur, it would "drain its denigrating force." *Id.*

<sup>12</sup> Michelle Chen, *How the Slants Reclaimed Their Name*, DISSENT MAG. (Aug. 16, 2017), [https://www.dissentmagazine.org/online\\_articles/the-slants-reclaimed-name-supreme-court-free-speech/](https://www.dissentmagazine.org/online_articles/the-slants-reclaimed-name-supreme-court-free-speech/) [<https://perma.cc/5Q66-MRSB>].

<sup>13</sup> *Id.*

<sup>14</sup> *See Tam*, 582 U.S. at 223.

<sup>15</sup> *Id.* at 246–47. *See* Mark Conrad, *Matal v. Tam—A Victory for the Slants, a Touchdown for the Redskins, but an Ambiguous Journey for the First Amendment and Trademark Law*, 36 CARDOZO ARTS & ENT. L.J. 83, 87 (2018). For an analysis of a similar trademark ruling in which the Supreme Court held that the bar against immoral-or-scandalous marks violated the First Amendment, see Clay Calvert, *Iancu v. Brunetti's Impact on First Amendment Law: Viewpoint Discrimination, Modes of Offensive Expression, Proportionality and Profanity*, 43 COLUM. J.L. & ARTS 37, 39 (2019).



pioneering empirical study, Barton Beebe and Jeanne Fromer examined 3.6 million trademark applications and found that the bar against “immoral or scandalous” marks is administered inconsistently by the USPTO.<sup>16</sup>

The present study represents a first of its kind effort by the authors to replicate Beebe and Fromer’s study in the Indian context, studying the bar against marks containing scandalous or obscene content embodied in Section 9(2)(c) of the Trade Marks Act of 1999.<sup>17</sup> Part 1 comments on the origin and controversy regarding morality-based proscriptions in international trademark law. Part 2 identifies the legislative lineage and relevance of Section 9(2)(c) in Indian trademark law. Part 3 comments on the importance of providing bulk datasets for research and explains the novel dataset created by the authors. Part 4 provides some basic statistics and trends observed by the authors in their dataset. Part 5 applies the methodology suggested by Beebe and Fromer to examine the administration of Section 9(2)(c) by the Registrar of Trademarks in India.

## I

### THE QUESTION OF MORALITY-BASED PROSCRIPTIONS

The precepts of intellectual property law are not completely divorced from moral and social facets. Not only does intellectual property law engender a lively debate about the foundational role of morality in the grant of monopolies, but it also sparks an ongoing debate regarding the continued role of moral precepts in the developing new IP standards.<sup>18</sup> Some scholars maintain that IP should evolve in an ethical, principled, and moral manner, harmonizing with the tapestry of societal values.<sup>19</sup> Yet, amidst this lively discourse, one realm where the hand of moral standards firmly grasps intellectual property law is its strategic alignment to prevent clashes with an imagined community moral compass. A prime example

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<sup>16</sup> Barton Beebe & Jeanne C. Fromer, *Immoral or Scandalous Marks: An Empirical Analysis*, 8 N.Y.U. J. INTELL. PROP. & ENT. L. 169, 171–72 (2018). Professors Beebe and Fromer conclude that, because of the provision’s inherent vagueness and inconsistency, it violates the Free Speech Clause and is unconstitutional.

<sup>17</sup> The Trade Marks Act, 1999, §9(2)(c) (India) (“A mark shall not be registered as a trade mark if ... it comprises or contains scandalous or obscene matter.”).

<sup>18</sup> See Laurence Helfer, *Toward a Human Rights Framework for Intellectual Property*, 40 U.C. DAVIS L. REV. 971, 975 (2007); Christine H. Farley, *A Research Framework on Intellectual Property and Morality*, in HANDBOOK ON INTELLECTUAL PROPERTY RESEARCH 791 (Irene Calboli & Lilla Montagnani eds., 2021).

<sup>19</sup> See Helfer, *supra* note 18, at 977; Farley, *supra* note 18, at 791–93.

of such alignment is evident in the exclusions to IP protections, most eminently in trademark law.

A. *The Inconsistency in Administering Morality-Based Trademark Restrictions*

Trademark law, like all regulatory regimes, delimits the subject matter it engages with. The limitations that the law places on trademark subject matter are often couched in the language of economic efficiencies.<sup>20</sup> However, there is one body of limitations that derive their legitimacy from moral justifications: morality-based proscriptions.<sup>21</sup> The first instance of statutory language invoking such moral considerations can be traced back to England's Trade Marks Registrations Act of 1875, which explicitly prohibited the registration of "scandalous designs" as trademarks.<sup>22</sup> While the Westminster Assembly decided not to provide statutory protection to messages that violated prevailing social standards, they did not offer any guidance on how to assess these violations.<sup>23</sup>

Despite the inherent ambiguity in the meaning and the scope of application of the morality-based exclusions in trademark law, they were adopted into the international trademark framework through the Paris Convention for the Protection

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<sup>20</sup> One of the foundational justifications of trademark law was provided by Landes and Posner. While their conclusion has been the subject of repeated scrutiny, it remains one of the most influential policy statements guiding the development of trademark law. See William M. Landes & Richard A. Posner, *Trademark Law: An Economic Perspective*, 30 J.L. & ECON. 265, 265–66 (1987) ("Our overall conclusion is that trademark law, like tort law in general . . . can best be explained on the hypothesis that the law is trying to promote economic efficiency."). For further reading, see Andrew Griffiths, *A Law-and-Economics Perspective on Trade Marks*, in TRADE MARKS AND BRANDS: AN INTERDISCIPLINARY CRITIQUE 241 (Lionel Bently et al. eds., 2008); TIM W. DORNIS, TRADEMARK AND UNFAIR COMPETITION CONFLICTS: HISTORICAL-COMPARATIVE, DOCTRINAL, AND ECONOMIC PERSPECTIVES 123 (2017).

<sup>21</sup> Professor Abdel-Khalik suggests that morality-based proscriptions are "entirely disconnected from the underlying purpose for which trademarks are protected." Jasmine Abdel-Khalik, *To Live in In-"fame"-y: Reconceiving Scandalous Marks as Analogous to Famous Marks*, 25 CARDOZO ARTS & ENT. L.J. 173, 213 (2007).

<sup>22</sup> The Trade Marks Registration Act 1875, 38 & 39 Vict. c. 91, § 6 (Eng.) ("It shall not be lawful to register as part of or in combination with a trade mark . . . any scandalous designs."); Colin Edward Manning, *Moral Bars on Trade Mark Registration* 9 (Sept. 2016) (L.L.M. Thesis, University College Cork, Ireland) (SSRN), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2875687](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2875687) [<https://perma.cc/NX5W-23P4>].

<sup>23</sup> See generally EDWARD MORTON DANIEL, THE TRADE MARKS REGISTRATION ACT, 1875, AND THE RULES THEREUNDER, WITH INTRODUCTION, NOTES, AND PRACTICAL DIRECTIONS AS TO REGISTERING TRADE MARKS. TOGETHER WITH THE MERCHANDISE MARKS ACT, 1862, WITH NOTES AND A COPIOUS INDEX TO THE WHOLE (Stevens & Haynes 1876).

of Industrial Property of 1883.<sup>24</sup> The provision allowed member countries to reject marks that are “contrary to morality or public order.”<sup>25</sup> Since the inception of the Paris Convention, morality-based exclusions have been embraced by 163 out of the 164 member states of the World Trade Organization.<sup>26</sup>

The cumulative effect of such exclusions is that signs and marks which are perceived as *morally unacceptable* are precluded from the benefits afforded by trademark registration. The innate unpredictability of these exclusions has been a subject of repeated criticism. Many scholars have cited the inconsistency in the application of these proscriptions to argue against their constitutionality. Reviewing the application of the ban against “scandalous,” “disparaging” and “immoral” marks within the American trademark law, Professor Megan Carpenter emphasized that the lack of sufficient definitional standards forced trademark examiners to apply erratic explanations, often arriving at inconsistent results.<sup>27</sup> Professor Alvaro Fernandez Mora reaches a similar conclusion in examining the European proscription against the registration of marks that are “contrary to public policy or accepted principles of morality.”<sup>28</sup> Likewise, the Singaporean<sup>29</sup> and Australian<sup>30</sup> trademark regimes have been criticized for their ambiguity and lack of certainty.

In recent years, the inherent inconsistency of trademark provisions restricting disparaging, scandalous, and immoral marks has received substantial judicial and statutory attention. In 2017, in his concurrence in *Matal v. Tam*, Justice Kennedy

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<sup>24</sup> Paris Convention for the Protection of Industrial Property *art. 6quinquies*, Mar. 20, 1883, 21 U.S.T. 1583, 828 U.N.T.S. 305, <https://www.wipo.int/wipolex/en/text/288514> [<https://perma.cc/8485-VYM8>]. *But see* World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights, art. 15(2), Apr. 15, 1994, 1869 U.N.T.S. 299, 33 I.L.M. 1197 [hereinafter TRIPS Agreement]. The TRIPS Agreement allowed member states to deny registration of trademarks and patents in line with the Paris Convention. However, no concomitant exclusion exists in the international framework governing copyright law.

<sup>25</sup> Paris Convention for the Protection of Industrial Property, *supra* note 24, at art. 6quinquies.

<sup>26</sup> The only exception being Vietnam. *See* Manning, *supra* note 22, at 75.

<sup>27</sup> Megan M. Carpenter & Kathryn T. Murphy, *Calling Bullshit on the Lanham Act: The 2 (a) Bar for Immoral, Scandalous, and Disparaging Marks*, 49 U. LOUISVILLE L. REV. 465, 482–83 (2010).

<sup>28</sup> Alvaro Fernandez-Mora, *Inconsistencies in European Trade Mark Law: The Public Policy and Morality Exclusions*, 4 INTELL. PROP. Q. 271, 271–72 (2020).

<sup>29</sup> Anil Samtani, *Trade Marks That Are Contrary to Public Policy or Morality: The Search for the Right-Thinking Man*, INTELL. PROP. Q. 39, 40 (2012).

<sup>30</sup> Anne-Marie Cropley, *The Registration of Scandalous Trade Marks*, INTELL. PROP. F.: J. INTELL. & INDUS. PROP. SOC’Y AUSTRAL. & N.Z. 20, 20–21 (2008).

explained how the bar against disparaging marks can be used to silence minority and dissenting opinions and is therefore violative of the free speech principles embodied in American constitutional jurisprudence.<sup>31</sup> Building on its decision, in 2019, the U.S. Supreme Court reached a similar conclusion when reviewing the bar against scandalous and immoral marks.<sup>32</sup> Across the Atlantic, the European Union (EU) has also struggled with the innate inconsistency in these provisions. The EU Intellectual Property Network developed a ‘Common Practice’ guide to enhance the consistency in the administration of morality-based restrictions on trademarks within the EU.<sup>33</sup>

These developments highlight the growing recognition that provisions restricting disparaging, scandalous, and immoral trademarks pose a potential threat to fundamental rights and that a more consistent and principled approach is needed in this area of intellectual property law. However, the first step towards delineating any such guidelines and examining morality-based proscriptions is understanding the administration of the provision and identifying the possible inconsistencies in its application. In a previous study, the authors commented on the lack of guidelines and consistency in the administration of morality-based proscriptions in India.<sup>34</sup> This underscores the need for a comprehensive examination of these issues across different jurisdictions.

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<sup>31</sup> *Tam*, 582 U.S. at 254 (Kennedy, J., concurring). For more details, see Calvert, *supra* note 15, at 39–40; M. P. Ram Mohan & Aditya Gupta, ‘Scandalous’ and ‘Obscene’ Trademark Law: Determining the Scope of Morality-Based Proscriptions in Indian Law 6–7 (Indian Inst. of Mgmt. Ahmedabad, Working Paper No. 2023-12-01, 2023), <https://www.iima.ac.in/publicationscandalous-and-obscene-trademark-law-determining-scope-morality-based-proscriptions> [https://perma.cc/9G45-2GFR].

<sup>32</sup> *Iancu v. Brunetti*, 588 U.S. 388, 399 (2019). For a comprehensive analysis of *Brunetti*’s effects on First Amendment law, see Calvert, *supra* note 15.

<sup>33</sup> See James Nurton, *Trade Marks Contrary to Public Policy or Accepted Principles of Morality*, EUR. UNION INTELL. PROP. OFF. (Mar. 7, 2024), <https://www.euipo.europa.eu/de/news/trade-marks-contrary-to-public-policy-or-accepted-principles-of-morality> [https://perma.cc/9UYX-MB5C].

<sup>34</sup> Ram Mohan & Gupta, *supra* note 31, at 20–21. See also M. P. Ram Mohan & Aditya Gupta, *Scandal and Obscene Trademarks: Determining Immoral Trademarks in Indian Law*, SPICYIP (Jan. 3, 2024), <https://spicyip.com/2024/01/scandal-and-obscene-trademarks-determining-immoral-trademarks-in-indian-law.html> [https://perma.cc/CQ7Z-3FDY].

*B. The lineage and interpretation of morality-based proscriptions in India*

The legislative lineage of morality-based proscriptions in Indian Trademark Law can be traced back to the Trade Marks Act of 1940.<sup>35</sup> Before 1940, trademark affairs in India were administered under the principles of English common law.<sup>36</sup> Infringement matters were resolved in accordance with the Specific Relief Act of 1877, while registration procedures were overseen by the Registration Act of 1908.<sup>37</sup>

The history of the Act of 1940 is that of a *Legal Transplant*.<sup>38</sup> It provides an interesting example of how a set of laws and legal doctrines were adopted by the recipient jurisdiction, in this case India, without according sufficient prominence to the unique cultural and social context.<sup>39</sup> Adopted from the English Trade Marks Act, 1875, Section 8 of the Indian Trade Marks Act, 1940 prohibited the registration of trade marks which “consists of, or contains, any scandalous design,” or marks which were contrary to morality.<sup>40</sup> However, one of the unique features of the law

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<sup>35</sup> For a history of regulation of issues related to trademarks before 1940 and the advocacy efforts which led to the enactment of the Trade Marks Act of 1940, see K. Rama Pai, *The New Trade Marks Act*, THE INDIAN TEXTILE J. 42, 42 (1890); T. P. Datta, *Trademark Law in India*, 46 TRADEMARK REP. 752, 752–753 (1956).

<sup>36</sup> P. B. Venkatasubramanian, *The Law of Trademarks in India*, 7 WORLD DEV. 737, 738 (1979) (“Some executed documents asserting their rights to the exclusive use of a particular trademark and registered them under the Indian Registration Act of 1908, which was primarily a law for registration of documents and, particularly, those transferring an interest in immovable property. . . . The jurisdiction of the Court under section 54 of the Specific Relief Act of 1877 to grant a perpetual injunction against infringement of a trademark was often sought with success. Damages could also be secured.”); V. K. Unni, *Transnational Influences in Trade Mark and Domain Name Protection: The Indian Experience*, in LOCATING INDIA IN THE CONTEMPORARY INTERNATIONAL LEGAL ORDER 186–87 (Srinivas Burra & R. Rajesh Babu eds., 2018).

<sup>37</sup> *Id.*

<sup>38</sup> For an interesting account of the relationship between intellectual property laws as legal transplants, see Alexander Peukert, *Intellectual Property: The Global Spread of a Legal Concept*, in KRITIKA: ESSAYS ON INTELLECTUAL PROPERTY 114–33 (Peter Drahos et al. eds., 2015). For a case study on how legal transplants operate and can potentially disrupt the cultural and social aesthetic of a country, see Elizabeth Adeney, *Of Moral Rights and Legal Transplants Connecting Laws, Connecting Cultures*, in ACROSS INTELLECTUAL PROPERTY: ESSAYS IN HONOUR OF SAM RICKETSON 64–76 (Graeme W. Austin et al. eds., 2020).

<sup>39</sup> Adeney, *supra* note 38, at 66.

<sup>40</sup> The Trade Marks Act, 1940, §8 (India). For an interesting account of the adoption of the Trade Marks Act of 1940, see Venkatasubramanian, *supra* note 36, at 737–39.

adopted in India was the explicit prohibition against registration of marks which are likely to hurt religious susceptibilities.<sup>41</sup>

The prohibition against the derogatory use of religious symbols draws its provenance from the unique socio-political situation of the Indo-British textile trade of the late 19th century. As textile mills from Great Britain and India ventured to explore new markets, their mill cloth was labelled with “ornate rectangular frame with an image from Indian mythology, or British Royalty.”<sup>42</sup> As Indian mills started using similar labels, in 1877, the Bombay Mill Owners’ Association petitioned the government to introduce a trademark law in line with the Trade Marks Registration Act of 1875 introduced in England.<sup>43</sup> When their petition was declined, the Bombay Mill Owners’ Association “defiantly decided to register the marks and labels of different mills in its own books, and resort to arbitration to resolve disputes.”<sup>44</sup> The Mill Owners’ resolution incorporated a condition that names of gods and goddesses would not be registrable.<sup>45</sup> In 1930s, when the deliberations for the creation of the Act of 1940 were initiated, a proposal was floated that the restriction imposed by the Bombay Mill Owners’ Association should be incorporated in the new legislation in an amended form.<sup>46</sup> The resulting

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<sup>41</sup> PRASHANT REDDY THIKKAVARAPU & SUMATHI CHANDRASHEKARAN, *CREATE, COPY, DISRUPT: INDIA’S INTELLECTUAL PROPERTY DILEMMAS* 325 (2016). *See* The Trade Marks Act, 1940, §7(2)(b) (India); Datta, *supra* note 35, at 756 (“The Trade Marks Act prohibits the registration of trademarks which consist of or contain, any scandalous design, or any matter the use of which would . . . be likely to hurt the religious susceptibilities of any class of citizens of the Indian Republic.”).

<sup>42</sup> REDDY THIKKAVARAPU & CHANDRASHEKARAN, *supra* note 41, at 324–25.

<sup>43</sup> Datta, *supra* note 35, at 752. In the British empire, India was one of the 16 countries which had no trademark legislation. Sir Courtney Terrell observed, “In company with Abyssinia, the Solomon Islands, Monaco, St. Helena, Sarawal and few other countries of similar commercial standing, the great Empire of India has no trademark legislation.” Venkatasubramanian, *supra* note 36, at 737.

<sup>44</sup> REDDY THIKKAVARAPU & CHANDRASHEKARAN, *supra* note 41, at 324; JYOTINDRA JAIN, *BOMBAY/MUMBAI: VISUAL HISTORIES OF A CITY* 20 (2013) (“Competition between the indigenous mills and their British counterparts politicized the registration of labels and trademarks. Despite a demand made in 1877 by the Bombay Mill Owners Association that the government introduce a Trade Marks Act for India, the government proposed, in 1881, that all Indian trademarks and labels should be registered in London. Bypassing this proposal, the ‘Bombay Mill Owners Association decided in 1886 to register the marks and labels of different mills in the books of the Association and refer the disputes to arbitration.”).

<sup>45</sup> REDDY THIKKAVARAPU & CHANDRASHEKARAN, *supra* note 41, at 324.

<sup>46</sup> *See id.*; SUBBIAH VENKATESWARAN, *THE LAW OF TRADE AND MERCHANDISE MARKS IN INDIA* 563 (1937).

Act of 1940 included an explicit prohibition against the use of religious symbols which was “introduced to deal with local conditions.”<sup>47</sup>

Therefore, through the Act of 1940, the morality-based proscriptions adopted in Indian trademark laws were effectively split into three constituent parts: marks that contain scandalous designs, marks that are contrary to morality, and marks that can potentially hurt religious susceptibilities. Given the unique provenance and the legislative history of the bar in favour of religious susceptibilities, the present study is limited to examining the bar against scandalous marks and marks which are contrary to morality.

The Act of 1940 was replaced by the Trade and Merchandise Marks Act of 1958.<sup>48</sup> It was enacted after a comprehensive review of the law of trademarks in India.<sup>49</sup> Following the report submitted by the Justice Ayyangar Committee, an amending bill was introduced, and after a series of consultations and revisions,<sup>50</sup> the Act of 1958 was enacted. In his report, Justice Ayyangar pointed out that the relevant English law, on which Section 8 in the Act of 1940 was modelled, had faced some judicial criticism.<sup>51</sup> He suggested that Indian law should move away from English law and towards Australian trademark law, which, at the time, did not reference morality and only proscribed the registration of scandalous marks.<sup>52</sup>

The resulting provision was embodied in Section 11(c) of the Act of 1958 and prohibited the registration of marks that “comprises or contains scandalous and obscene matter.”<sup>53</sup> The discussion of the transition from the Act of 1940 to

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<sup>47</sup> GOV'T OF INDIA MINISTRY OF COM. & INDUS., REPORT OF SHRI JUSTICE N. RAJAGOPALA AYYANGAR ON TRADE MARKS LAW REVISION 1955, at 35 (1955).

<sup>48</sup> Trade and Merchandise Marks Act, 1958 (India).

<sup>49</sup> “With the rapid growth and development of commerce and industry during the last decade, there has been a persistent demand from the commercial public for revision of the law is dealing with trademarks and trade descriptions.” Lok Sabha Debates, Second Series Volume XVI, 13197 (May 5, 1958) (India).

<sup>50</sup> After the report was submitted by Justice Ayyangar, a joint parliamentary committee was constituted to evaluate the Trade and Merchandise Marks Bill.

<sup>51</sup> GOV'T OF INDIA MINISTRY OF COM & INDUS., *supra* note 47, at 35.

<sup>52</sup> The Ayyangar Committee made a limited reference to the term “morality.” While dealing with the issue of morality based proscriptions, the Committee omitted any reference to the term “morality.” However, use of the term was relegated to a different provision which prohibited the use of trademarks which are “contrary to law or morality.” The reference to morality was moved away from the interpretation and construction of the term ‘scandalous,’ and was now referred to a different provision. GOV'T OF INDIA MINISTRY OF COM. & INDUS., *supra* note 47, at 35–36.

<sup>53</sup> The Trade and Merchandise Marks Act, 1958, §11(c) (India).

the Act of 1958 clarifies that the morality-based proscription in Indian law was adopted from the Australian law, where the restriction is limited to scandalous marks.<sup>54</sup> However, this discussion does not clarify how did the term “obscene” find mention in the Act of 1958. In a previous study, we have problematized the incorporation of the word “obscene” in India’s morality-based proscription.<sup>55</sup> The Ayyangar Committee does not refer to a bar against “obscene” marks. After the Committee’s report was submitted, public consultations were conducted,<sup>56</sup> and the resulting bill was also re-referred to a Joint Parliamentary Committee (JPC).<sup>57</sup> In the meticulous evidence submitted by the JPC,<sup>58</sup> and the plethora of amendments suggested by them,<sup>59</sup> no reference was made to the inclusion of a bar against marks containing obscene matter. Therefore, it remains unclear how the term ‘obscene’ finds reference in the Act of 1958.

Regardless of its provenance, the bar against scandalous and obscene marks continues to be a part of Indian Law. The Act of 1958 has since been replaced by the Trade Marks Act of 1999, which incorporates the bar against marks that “comprises or contains scandalous and obscene matter” in Section 9(2)(c).<sup>60</sup>

In the eight decades since the prohibition was incorporated into the Indian trademark law, it has suffered from an acute lack of judicial, administrative, and academic engagement. The only guiding instrument that can educate the interpretation of the provision comes from a draft manual (“the Manual”), published by the Controller General of Patents, Trade Marks and Designs (CGPTDM) in 2015.<sup>61</sup>

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<sup>54</sup> At the time when the Trade and Merchandise Marks Act of 1958 was prepared, Justice Ayyangar made reference to Section 28, of the Australian Trade Marks Act of 1955. Since then, the Act of 1955 has been replaced by the Australian Trade Marks Act of 1995, which incorporates the morality based proscription in Section 42(a). The language for both the provisions is identical, and only includes a reference to scandalous marks. See Amanda Scardamaglia, *Are You Nuckin Futs? Registering “Scandalous” Trade Marks in Australia*, 34 EUR. INTELL. PROP. REV. 628, 628 (2012); Ram Mohan & Gupta, *supra* note 31, at 4.

<sup>55</sup> Ram Mohan & Gupta, *supra* note 31, at 16–17.

<sup>56</sup> Lok Sabha Debates, *supra* note 49, at 13198–131200.

<sup>57</sup> *Id.* at 13213–15.

<sup>58</sup> Joint Committee on The Trade and Merchandise Marks Bill (Evidence), 1958 (July 1958) (India).

<sup>59</sup> *Id.* at 2–7.

<sup>60</sup> The Trade Marks Act, 1999, §9(2)(c) (India).

<sup>61</sup> OFF. OF CONTROLLER GEN. PATS., DESIGNS & TRADE MARKS, A DRAFT OF MANUAL OF TRADE MARKS PRACTICE & PROCEDURE (2015)



The Manual encapsulates the provisions and practices outlined in the Trade Marks Act of 1999 and Trade Marks Rules of 2017, presenting them along with the office procedures in a simplified and coherent manner.<sup>62</sup> It functions as a general guide enumerating and explaining the practice of the Trade Marks Registry. However, the Manual suffers from multiple inconsistencies. Primarily, with the Act of 1958, the Indian law disavowed the language adopted from the English statute and removed the use of the term ‘morality’ from the consideration of morality-based proscriptions in India.<sup>63</sup> In moving towards the Australian law, the Act of 1958 adopted the term ‘Scandal.’<sup>64</sup> Since the term has been adopted from Australian law, it is only logical that its interpretation should also be educated by Australian law. However, that has not been the case. Since at least 1950, it is a well-established principle in Australian trademark law that consideration of ‘scandal’ does not allow a Trade Marks Examiner to engage with issues related to morality.<sup>65</sup> Despite clear indication from the legislative history, the Manual maintains that, “Scandalous marks are those likely to offend accepted principles of morality.”<sup>66</sup> This is only one example of the many inconsistencies in the Trade Marks Manual, which, as mentioned previously, is the only guidance in Indian law for interpreting the scope of Section 9(2)(c).<sup>67</sup>

In the following parts of the paper, the authors demonstrate how an absolute lack of definitional standards and guidelines for the administration of the provision has yielded erratic and inconsistent results.

## II DATASET

Publicly accessible bulk datasets of trademark application and registration information are crucial for enabling comprehensive, data-driven research on

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<sup>62</sup> *Id.*; K. C. KAILASAM & RAMU VEDARAMAN, LAW OF TRADE MARKS & GEOGRAPHICAL INDICATIONS: WITH COMMENTARY ON THE TRADE MARKS ACT, 1999 & GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999: LAW, PRACTICE & PROCEDURE (3 ed. 2013).

<sup>63</sup> The Trade and Merchandise Marks Act, 1958, §11(c) (India).

<sup>64</sup> *Id.*

<sup>65</sup> “Clause 28, while in different words, has in substance the same effect as section 114 of the [Trade Marks Act, 1905], but it relieves the Registrar of the court from the consideration of ‘morality.’” *New South Wales Dairy Corp. v. Murray Goulburn Co-Op Co. Ltd.* (1990) 171 CLR 363 (Austl.).

<sup>66</sup> OFF. OF CONTROLLER GEN. PATS., DESIGNS & TRADE MARKS, *supra* note 61, at 60.

<sup>67</sup> For a more detailed explanation of the inconsistencies in the Manual, see Ram Mohan & Gupta, *supra* note 31.

the administration of trademark law, including morality-based restrictions. Such datasets allow researchers to systematically examine trends, predictability, and potential biases in how trademark provisions are applied. In this section, we outline the dataset we developed in order to analyze morality-based restrictions in Indian trademark law. This section also emphasizes the importance of trademark offices making their data publicly available in a structured format, and will highlight valuable opportunities for research to better understand the practical implementation of trademark regulations.

In 2015, India's Office of the Controller General of Patents, Designs and Trade Marks (CGPTDM) completed the digitization of their trade mark records.<sup>68</sup> All the details of trade mark applications, including their prosecution history and current status, have been made available to the general public free of charge through IP India's website.<sup>69</sup> The first digitized entry on the register dates back to June 1, 1942, where the mark BLACK & WHITE was registered by the Trade Marks Office at Kolkata.<sup>70</sup> Since 1942, the Registry has processed over 6.3 million applications, all of which have been digitized and are available on the CGPTDM's website.

The website provides extensive data-points, including the original trade mark application, the examination report, opposition notices, and replies thereto, along with all the notices for Show Cause Hearings and all the office orders issued by the Registrar of Trade Marks.<sup>71</sup> While the CGPTDM's completion of this herculean task is commendable, the portals which provide access have been designed to cater only to the applicants and the professionals involved in the trade mark prosecution process. The CGPTDM has not created any bulk datasets from its digitized corpus of 6.2 million applications.

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<sup>68</sup> OFF. OF CONTROLLER GEN. OF DESIGNS, TRADE MARKS & GEOGRAPHICAL INDICATION, ANNUAL REPORT 2013–2014, [https://ipindia.gov.in/writereaddata/Portal/IPOAnnualReport/1\\_91\\_1.1\\_29.1\\_annual-report-13-14-.pdf](https://ipindia.gov.in/writereaddata/Portal/IPOAnnualReport/1_91_1.1_29.1_annual-report-13-14-.pdf) [<https://perma.cc/CV3Y-XHJY>] (last visited Mar. 13, 2024).

<sup>69</sup> *Id.*

<sup>70</sup> Indian Trade Mark Application No. 10. This is the first digitized application. It is not clear why the applications filed prior to this are not available in the digitized database. For a review of the initial load of applications filed before the Trade Marks Registry, see W.C. Smith, *Recent Developments in Indian Trade-Marks Practice*, 41 TRADEMARK REP. 202, 203 (1951) (“The first applications were made on June 1st, 1942 and by September 30, 1950, over 145,000 applications had been made for registration and more than 1,650 Oppositions had been filed during the same period. These figures should give some idea of the immense pressure of work at the Trade-Marks Registry during these years.”).

<sup>71</sup> OFF. OF CONTROLLER GEN. OF PATS. DESIGNS & TRADE MARKS, <https://www.ipindia.gov.in> [<https://perma.cc/H89M-FKRV>] (last visited Apr. 13, 2024).

A. *Existing Datasets in Other Countries and Possible Research Opportunities*

Many other trademark offices across the world have adopted progressive measures by establishing and providing access to comprehensive bulk datasets, facilitating streamlined access to essential information and data points relevant to trademarks. Notable examples include the USPTO Trademark Case Files Dataset,<sup>72</sup> the Canada Trademarks Dataset,<sup>73</sup> and the Australian TM-Link Dataset.<sup>74</sup> These datasets have emerged as invaluable resources for conducting extensive research, offering nuanced insights that have potentially reshaped the landscape of trademark laws on a global scale.<sup>75</sup> Their accessibility and utility have played a pivotal role in advancing scholarly discourse and informing policy decisions.

The open availability of these datasets has kindled research along three major praxes.<sup>76</sup> First, the information gathered from the datasets has been used to study the operation of economy. For example, Meindert Flikkema, Ard-Pieter De Man, and Carolina Castaldi examined a sample of 660 new Benelux trademarks to argue in favour of using the trademark data as an indicator of innovation for Small and Medium Enterprises.<sup>77</sup> The authors suggested that trademark counts allow for a better measurement of service innovation and provide important information

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<sup>72</sup> See generally Stuart J.H. Graham et al., *The USPTO Trademark Case Files Dataset: Descriptions, Lessons, and Insights*, 22 J. ECON. & MGMT. STRATEGY 669 (2013).

<sup>73</sup> For more details, see Jeremy N. Sheff, *The Canada Trademarks Dataset*, 18 EMPIRICAL LEGAL 908 (2021). This particular dataset was created by the author, but the bulk of underlying data is available openly from the Canadian trademarks office.

<sup>74</sup> See generally Stephen Petrie et al., *TM-Link: An Internationally Linked Trademark Database*, 53 AUSTL. ECON. REV. 254 (2021).

<sup>75</sup> One example of how empirical research in trademark law has affected trademark and policy can be traced to Professor Beebe and Professor Fromer’s amicus brief, which was cited by the U.S. Supreme Court in overruling the constitutional validity of prohibition against registration of “scandalous” and “immoral” marks. *Iancu v. Brunetti*, 588 U.S. 388, 395 (2019).

<sup>76</sup> See Petrie et al., *supra* note 74, at 255. The studies can also be classified between economic and non-economic studies. For a review of the economic studies, see Philipp Schautschick & Christine Greenhalgh, *Empirical Studies of Trade Marks—The Existing Economic Literature*, 25 ECON. OF INNOVATION & NEW TECH. 358 (2016). For a review of studies which operate in the legal spectrum, see Barton Beebe, *Empirical Studies of Trademark Law*, in RESEARCH HANDBOOK ON THE ECONOMICS OF INTELLECTUAL PROPERTY LAW 617 (Ben Depoorter & Peter S. Menell, eds., 2019).

<sup>77</sup> Meindert Flikkema, Ard-Pieter De Man & Carolina Castaldi, *Are Trademark Counts a Valid Indicator of Innovation? Results of an In-Depth Study of New Benelux Trademarks Filed by SMEs*, 21 INDUS. & INNOVATION 310, 310 (2014).

to measure the development and proliferation of technology-based innovation products.<sup>78</sup> Valentine Millot also argued in favour of using trademark data as an indicator of non-technological innovation.<sup>79</sup> She suggested that trademark data can provide important information to study innovation in service sectors.<sup>80</sup>

The second area where trademarks data can stimulate research is studying the branding and marketing strategies of firms. When companies aim to attract new customers and alter their market positioning, it can be beneficial for them to develop a new trademark.<sup>81</sup> Moreover, establishing new trademarks can also motivate a company to focus more on marketing innovation.<sup>82</sup> Alexander Krasnikov, Saurabh Mishra, and David Orozco suggested that trademarks can serve as indicators of firms' efforts to build brand awareness and associations among consumers, which in turn mitigate cash flow variability and enhance financial value.<sup>83</sup>

Lastly, trademark data has been extensively used to study the operations and efficacies of trademark systems. In 2018, Beebe and Fromer analysed the Trademark Case Files Dataset published by the USPTO to study if fewer trademarks are available due to existing registrations and if an increasing number of applications seek to claim marks which have already been claimed by previous proprietors.<sup>84</sup> They found that both of these trends have been increasing since the 1990s, and applications filed relatively recently favour complex, unique neologisms over standard English or common surnames.<sup>85</sup> Their study concluded that “ecology of the trademark system is breaking down, with mounting barriers to

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<sup>78</sup> *Id.* at 327.

<sup>79</sup> Valentine Millot, *Trademarks As An Indicator of Product and Marketing Innovations* 3 (OECD Sci., Tech. & Indus. Working Papers, Paper No. 2009/06), [https://www.oecd-ilibrary.org/science-and-technology/trademarks-as-an-indicator-of-product-and-marketing-innovations\\_224428874418](https://www.oecd-ilibrary.org/science-and-technology/trademarks-as-an-indicator-of-product-and-marketing-innovations_224428874418).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* For a much broader and more comprehensive view, see Carolina Castaldi, *All the Great Things You Can Do with Trademark Data: Taking Stock and Looking Ahead*, 18 STRATEGIC ORG. 472 (2020).

<sup>83</sup> Alexander Krasnikov, Saurabh Mishra & David Orozco, *Evaluating the Financial Impact of Branding Using Trademarks: A Framework and Empirical Evidence*, 73 J. MARKETING 154, 154 (2009).

<sup>84</sup> Barton Beebe & Jeanne C. Fromer, *Are We Running Out of Trademarks? An Empirical Study of Trademark Depletion and Congestion*, 131 HARV. L. REV. 945, 947–48 (2017).

<sup>85</sup> *Id.* at 951–52. Beebe and Fromer's study opened up a larger conversation about the empirical effects of congestion and depletion on the trademark register. For further discussion of this issue, see Lisa Larrimore Ouellette, *Does Running out of (Some) Trademarks Matter?*, 131 HARV. L. REV. F. 116, 126 (2017) (“But given the lack of rigorous evidence regarding either the costs or the benefits of either depletion or congestion, much less the welfare effects of any particular policy change, it seems premature to recommend significant

entry, increasing consumer search costs, and an eroding public domain.”<sup>86</sup> Von Graevenitz, Greenhaigh, Helmers, and Schautschick studied a similar trend in the European context. They employed the openly available datasets to examine if trademark registers contain “such a large number of unused and overly broad trade marks that the costs of creating and registering new marks substantially increase for other applicants.”<sup>87</sup>

Apart from issues related to congestion and cluttering, various other scholars have empirically examined issues related to trademark registration. Gerhardt and McClanahan studied how the involvement and quality of legal representation, compared to when an applicant proceeds *pro se*, impacted their success rate for registration.<sup>88</sup> They identify that attorney-filed applications had a much higher chance of securing registration when compared to *pro se* applicants, especially in cases when the applications met with an Office action.<sup>89</sup>

In 2017, in *Matal v. Tam*, the U.S. Supreme Court held that the bar against disparaging marks violated the principles of the First Amendment and was therefore unconstitutional.<sup>90</sup> In the wake of this decision, the scholarly community alluded to the possibility that the decision could result in the filing and registration of marks which disparage and besmirch minorities.<sup>91</sup> However, empirical evidence

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action. Concerns about the exhaustibility of competitively effective marks might end up being no weightier than John Stuart Mill’s worries about the exhaustibility of musical combinations.”).

<sup>86</sup> Beebe & Fromer, *supra* note 85, at 948.

<sup>87</sup> GEORG VON GRAEVENITZ ET AL., TRADE MARK CLUTTERING: AN EXPLORATORY REPORT COMMISSIONED BY UKIPO 1 (2012); *see also* Georg von Graevenitz, *Trade Mark Cluttering—Evidence from EU Enlargement*, 65 OXFORD ECON. PAPERS 721, 722–23 (2013). For a similar study in the Australian context, see Haiyang Zhang, *Does Trade Mark Cluttering Exist in Australia?* (IP Australia, Research Paper No. 07, 2019).

<sup>88</sup> Deborah R. Gerhardt & Jon P. McClanahan, *Do Trademark Lawyers Matter?*, 16 STAN. TECH. L. REV. 583, 597 (2012).

<sup>89</sup> *Id.* at 607, 616, 622. During the period analyzed, attorney-filed applications had a higher publishing rate of 82% compared to *pro se* applications with a rate of 60%, especially when applications received an Office action from the USPTO, with rates of 72% and 45% respectively. Attorney-filed petitions had a registration percentage of 60%, which was much higher than the 42% registration rate for *pro se* applicants. The authors provide convincing and extensive evidence that higher levels of experience among both *pro se* and attorney-filed applicants are closely associated with higher publication and registration rates.

<sup>90</sup> *Matal v. Tam*, 582 U.S. 218, 246–47 (2017). *See also* Simon Tam, *First Amendment, Trademarks, and the Slants: Our Journey to the Supreme Court*, 12 BUFF. INTELL. PROP. L.J. 1, 15–16 (2018).

<sup>91</sup> *See, e.g.*, Gary Myers, *Trademarks & the First Amendment After Matal v. Tam*, 26 J. INTELL. PROP. L. 67, 95 (2019). Professor Myers suggests that one of the categories of applicants who would avail the benefits of the Supreme Court’s decision were “those who seek affirmatively to give offense or disparage.

suggests otherwise. First, Huang examined the data from the USPTO to identify trademark applications for racially-oriented marks and the effect of the Supreme Court's ruling on these applications.<sup>92</sup> Amongst a dataset of 4 million applications, she identified only 312 racially-oriented applications and concluded that there was no overall increase in the number of racially-oriented applications following the Supreme Court's decision.<sup>93</sup> Additionally, Goodyear extended this examination to queer trademarks and identified that while applications for queer trademarks had significantly increased, they were unanimously self-affirming.<sup>94</sup>

### B. *Building a Unique Dataset*

Given the lack of comparable large-scale datasets, empirical scholarship relating to trademarks in India remains very scarce.<sup>95</sup> This position is most critically visible in legal scholarship, empirically studying the functioning and efficacy of trademark systems in India. To fill this gap and contribute to the empirical literature examining trademark systems, we created a novel dataset by downloading and collecting examination reports from the online portal of the Trade Marks Registry. This exercise was conducted between October and December 2023, and 1.6 million applications filed between June 2018 and July 2022 were downloaded.<sup>96</sup>

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This last category of speakers were the natural targets of the Lanham Act's prohibitions, but the *Tam* ruling clearly establishes that they cannot be singled out for censorship, however offensive their intentions might be." Alternatively, there were other scholars who argued that given that trademarks operate in a free economy, the negative effects of registering disparaging marks would curtail the number of potentially disparaging marks. See Timothy T Hsieh, *The Hybrid Trademark and Free Speech Right Forged from Matal v. Tam*, 7 NYU J. J. INTELL. PROP. & ENT. L 1, 20–23 (2017).

<sup>92</sup> Vicki Huang, *Trademarks, Race and Slur-Appropriation: An Inter-Disciplinary and Empirical Study*, 2021 U. ILL. L. REV. 1605, 1610 (2021).

<sup>93</sup> *Id.* at 1605, 1632.

<sup>94</sup> Michael P. Goodyear, *Queer Trademarks*, 2024 U. ILL. L. REV. 163, 200 (2024). Goodyear argued that the Supreme Court's decision facilitated the queer community to adopt self-affirming marks, rather than serving as a medium for out-groups to adopt queer marks as symbols of hate and disparagement.

<sup>95</sup> There are some individually created datasets, but they have been very limited. See, e.g., Mohit Yadav, *A Decade of Madrid Protocol: Learnings from the Indian Experience*, 7 J. INTELL. PROP. STUD 54, 54 (2023); Mohit Yadav, *Who Watches the Watchmen? – Empirically Examining Examination Reports (Part 1)*, SPICYIP (Nov. 2, 2021), <https://spicyip.com/2021/11/who-watches-the-watchmen-empirically-examining-examination-reports-part-1.html> [https://perma.cc/2KKN-4ME2].

<sup>96</sup> Amongst the 1.6 million applications analyzed, only 1,596,987 Examination Reports could be downloaded. A possible reason for the discrepancy can be that Examination Reports for some marks are yet to be published or that some marks were withdrawn before the Examination Reports could be provided.

After accumulating the examination reports, we auto-coded the dataset to identify the applications that received an objection under Section 9(2)(c) for containing scandalous or obscene content. This exercise identified 140 examination reports where any combination of the words ‘scandalous,’ ‘obscene,’ or ‘9(2)(c)’ was mentioned.

After identifying the applications, the authors hand-coded various important attributes of the applications including, the proprietor’s name, goods descriptions, and the trademark office where the application was filed. The applications were also classified between device marks and word marks.<sup>97</sup> Amongst the 140 applications that received an objection under Section 9(2)(c), 91 applications were filed for securing registrations to device marks. To conduct a comparative analysis of the device marks, the authors used either the marks essential textual features<sup>98</sup> or their textual depiction as presented in the trademark application.<sup>99</sup> This exercise was conducted in February 2024, and any changes made to the applications after February have not been incorporated in the database.

The next section details some important trends and statistics which arise from the examination of the author’s novel dataset.

### III DESCRIPTIVE STATISTICS

Figure 1 provides the overall context for the study. As per the data collected from the Annual Reports of the CGPTDM, since the turn of the century, the number of applications filed for registration has been consistently increasing at

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<sup>97</sup> Word mark includes one or more words, letters, numerals or anything written in standard character. Device mark includes any label, sticker, monogram, logo or any geometrical figure other than word mark.

<sup>98</sup> *S.M. Dyechem Ltd. v. Cadbury (India) Ltd.*, (2000) 5 SCC 573. Here, the Court suggested that “[a] mark is said to be infringed by another trader if, even without using the whole of it, the latter uses one or more of its ‘essential features.’” Such an interpretation essentially means that the grant of registration for a mark not only protects the composite mark, but it also protects the essential features of the mark individually. For more details, see Aqa Raza & Ghayur Alam, *Theoretical Underpinnings of Trademark Law: Decisions of the Supreme Court of India*, 27 RIGHTS 351, 354–55 (2022). See also Aqa Raza & Ghayur Alam, *Trademark Law Declared by the Supreme Court of India in Twenty-First Century (2000–2009) — I*, 28 J. INTELL. PROP. 445, 449–50 (2023).

<sup>99</sup> Section 23 of the Trade Mark Rules 2017 mandate that if an applicant files for a device mark, he is required to “explain with sufficient precision, a description of words, of the trademark.” The Trade Marks Rules, 2017, Rule 23(2)(a) (India). Where required, we have used these descriptions as the essential features of the subject marks.

the rate of 8.66% annually. In the year 2000–01, 84,275 applications were filed for registration, and this number increased to 466,580 in 2022-23, effectively quintupling over the course of 22 years.

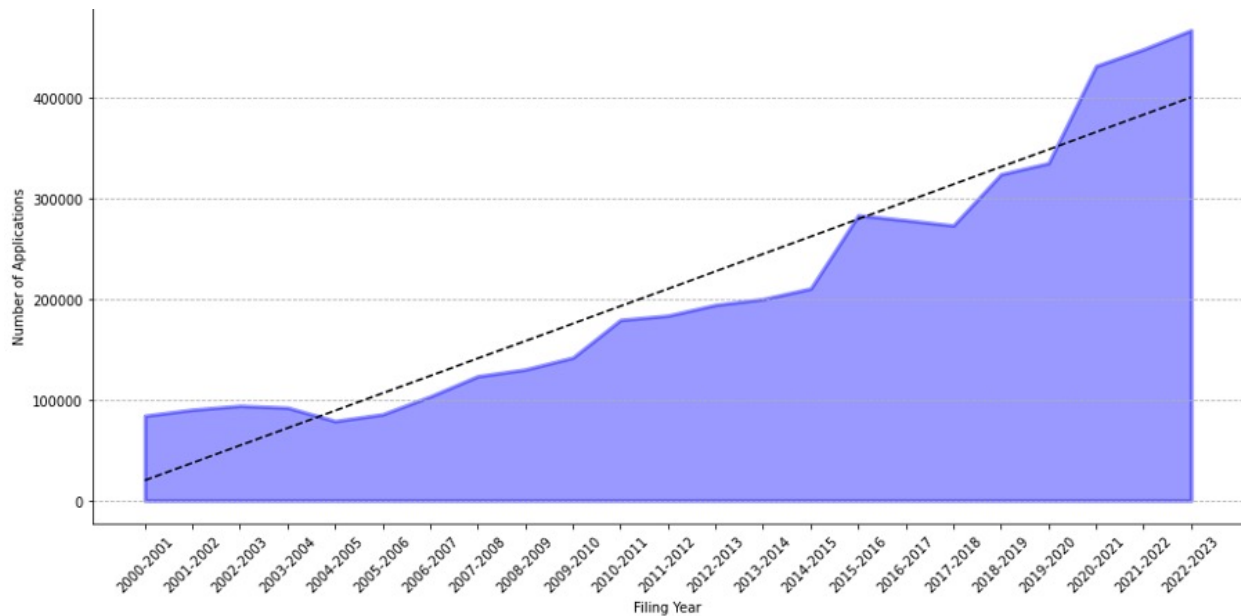


Figure 1: Number of applications filed annually

As discussed previously, the dataset for the present study encompasses the trademark applications filed between June 2018 and July 2022. Amongst the 1.6 million examination reports studied by the authors, only 140 applications were objected for containing scandalous or obscene matter, thereby attracting the mandate of Section 9(2)(c). Following the issuance of the Examination Report, the applicants are required to file a reply to the objections made in the Examination Report within 30 days. In case the applicant fails to provide a reply within the stipulated timeline, his application would be deemed abandoned due to non-prosecution.<sup>100</sup> In the database examined for the present study, no replies were filed for 15 applications. Surprisingly, only 3 of these were officially designated as ‘Abandoned’ by the Registry. The remaining 12, although meeting the criteria for abandonment, did not receive formal abandonment orders.<sup>101</sup>

<sup>100</sup> Section 33 of the Trade Marks Rules of 2017 states, “If, within one month from the date of receipt of the examination report, the applicant fails to respond to the communication, the Registrar may treat the application as abandoned.” The Trade Marks Rules, 2017, Rule 33(4) (India).

<sup>101</sup> The latest examination report within these 12 applications was published on April 10, 2023 and corresponds to the following applications: Indian Trade Mark Application No. 4,230,985 (filed July 10,



After a reply to the examination report is filed, if the Registrar of Trade Marks is not convinced with the submissions made therein, they can require the applicant to appear in a 'Show Cause Hearing.' During the hearing, an applicant is required to justify why their application should be allowed to proceed.<sup>102</sup> Until such a hearing is completed, and the Registrar passes an order to the effect, the application is considered 'Objected.' Alternatively, applicants have the option to withdraw their application within 30 days of the Examination Report.<sup>103</sup>

After the reply to the Examination Report is filed and the Show Cause hearing is conducted, if the Registrar is satisfied with the submissions made therein, the objections are waived and the application is advertised in the Trade Marks Journal.<sup>104</sup> Alternatively, if the Registrar is not convinced with the submissions made, the objections are sustained, and the application for registration is Refused. In the author's dataset, an advertised mark is denoted 'Accepted' or 'Accepted and Advertised,' and if the application is refused, the status reflects 'Refused.' In the time period examined for the present study, only 1 application was withdrawn, 38 were accepted, 47 were refused and 30 are currently under objection, awaiting either acceptance or refusal.

Once a trademark is Accepted and Advertised in the Trade Marks Journal, the general public is invited to oppose the application within 4 months from the date of advertisement.<sup>105</sup> During the time that an opposition is pending, the application status reflects 'Opposed' in the author's dataset. If no oppositions are filed against

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2019); Indian Trade Mark Application No. 4,455,581 (filed Feb. 27, 2020); Indian Trade Mark Application No. 4,510,750 (filed May 26, 2020); Indian Trade Mark Application No. 4,546,877 (filed June 27, 2020); Indian Trade Mark Application No. 4,614,403 (filed Aug. 18, 2020); Indian Trade Mark Application No. 4,823,848 (filed Jan. 18, 2021); Indian Trade Mark Application No. 4,826,742 (filed Jan. 19, 2021); Indian Trade Mark Application No. 4,826,743 (filed Jan. 19, 2021); Indian Trade Mark Application No. 5,124,517 (filed Sept. 9, 2021); Indian Trade Mark Application No. 5,230,482 (filed Dec. 1, 2021); Indian Trade Mark Application No. 5,251,506 (filed Dec. 17, 2021); Indian Trade Mark Application No. 5,279,876 (filed Jan. 11, 2021).

<sup>102</sup> Trade Marks Rules, 2017, Rule 33(6) (India) ("If the response to the examination report is not satisfactory or where the applicant has requested for hearing, the registrar shall provide an opportunity of hearing to the applicant and the same shall be conducted as per rule 115.").

<sup>103</sup> Trade Marks Rules, 2017, Rule 35 (India) ("A notice of withdrawal of an application for the registration of a trademark under sub-section (2) of section 133, for the purpose of obtaining repayment of any fee paid on the filing of the application, shall be given in writing within one month from the date of the receipt of communication mentioned in sub-rule (2) of rule 33.").

<sup>104</sup> Trade Marks Act, 1999, § 20(1) (1999) (India); Trade Marks Rules, 2017, Rule 33 (India).

<sup>105</sup> Trade Marks Rules, 2017, Rule 43 (India).

the application, it proceeds to be ‘Registered.’ In the present dataset, 3 applications are going through opposition proceedings, while 25 have been registered. Figure 2 visually explains the prosecution process for a trademark application in India.

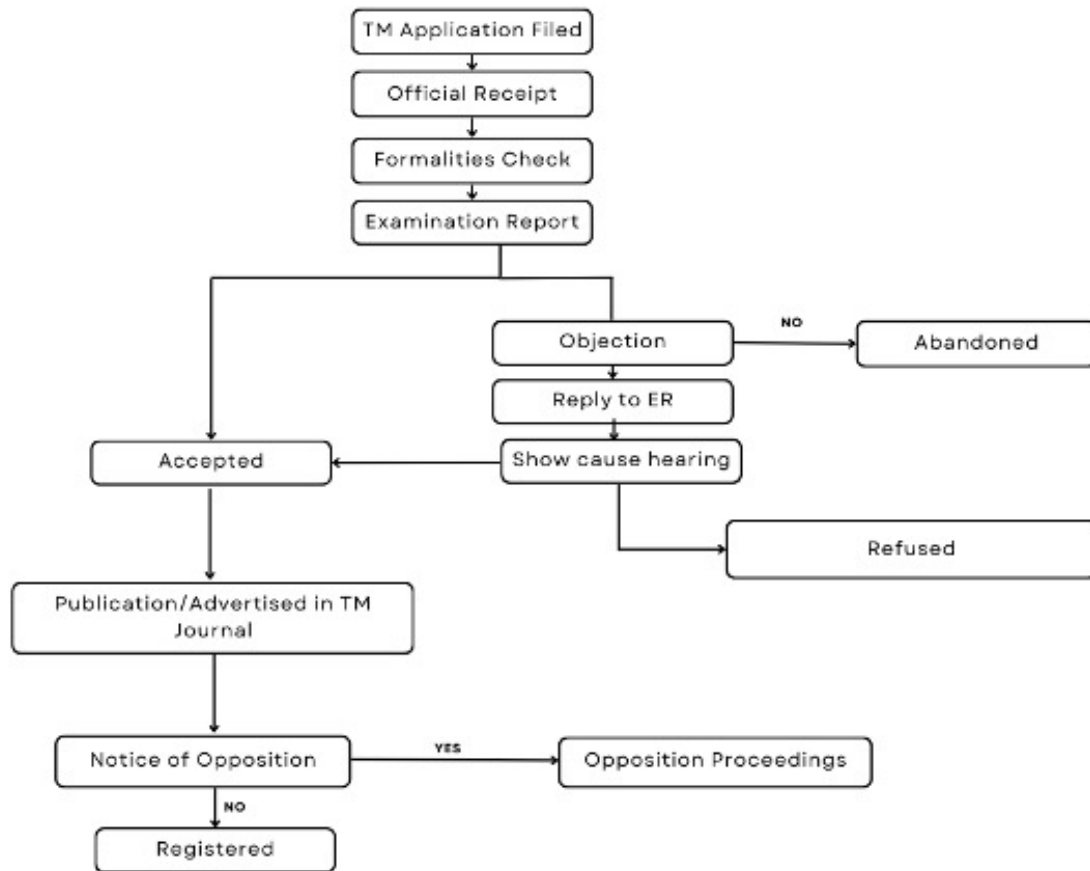


Figure 2: Procesution Process

Figure 3 visualizes the progress of the applications that received an objection under Section 9(2)(c), through the trademark prosecution process. Amongst the 140 applications which were issued an objection under Section 9(2)(c), only 125 applicant filed responses to the objections raised in the Examination Report. Amongst the 125, 30 applications remain objected, and 1 has been withdrawn. In due time, the 30 applications currently under objections would either be Withdrawn, Refused or Accepted. For the remaining 95 applications, 47 were Refused, while 38 were Accepted. Amongst the 38 Accepted applications, 10 are open for Opposition, 3 have been Opposed and 25 have been Registered.

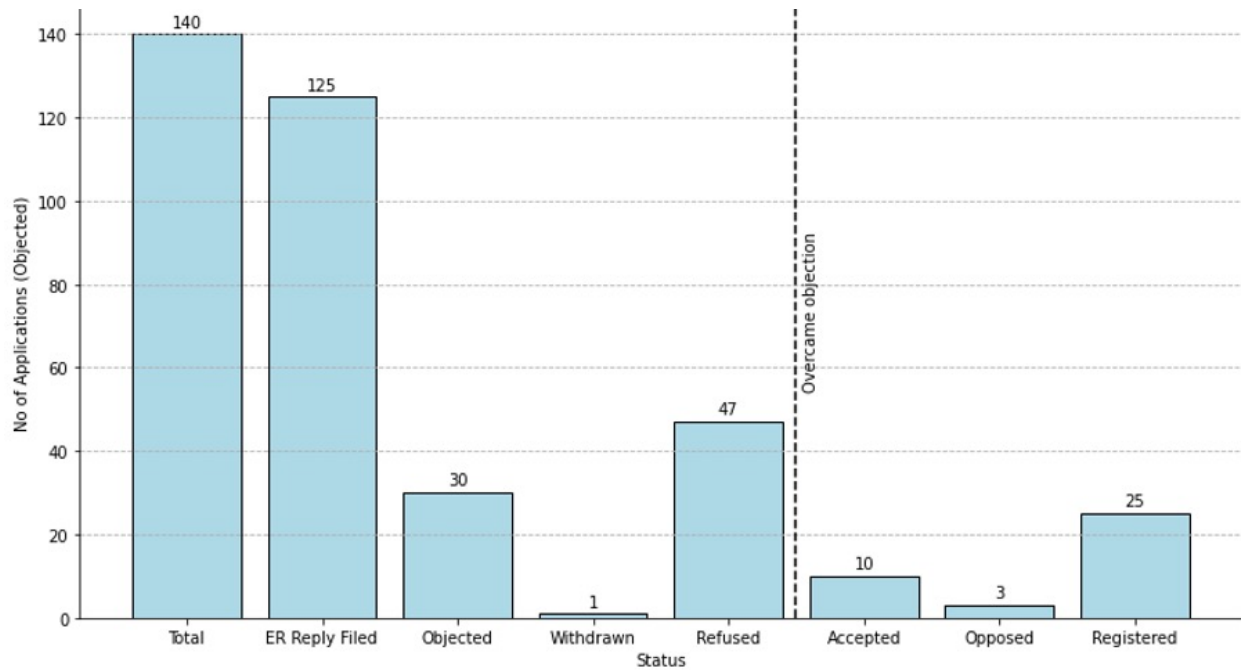


Figure 3: Prosecution history of applications which received a 9(2)(c) objection

Figure 4 illustrates the number of applications that received an objection under Section 9(2)(c), presented alongside the applications that successfully overcame the objection. The tally for applications where objections were withdrawn only includes applications that were advertised in Trade Marks Journal after being objected under Section 9(2)(c) as of February 2024.

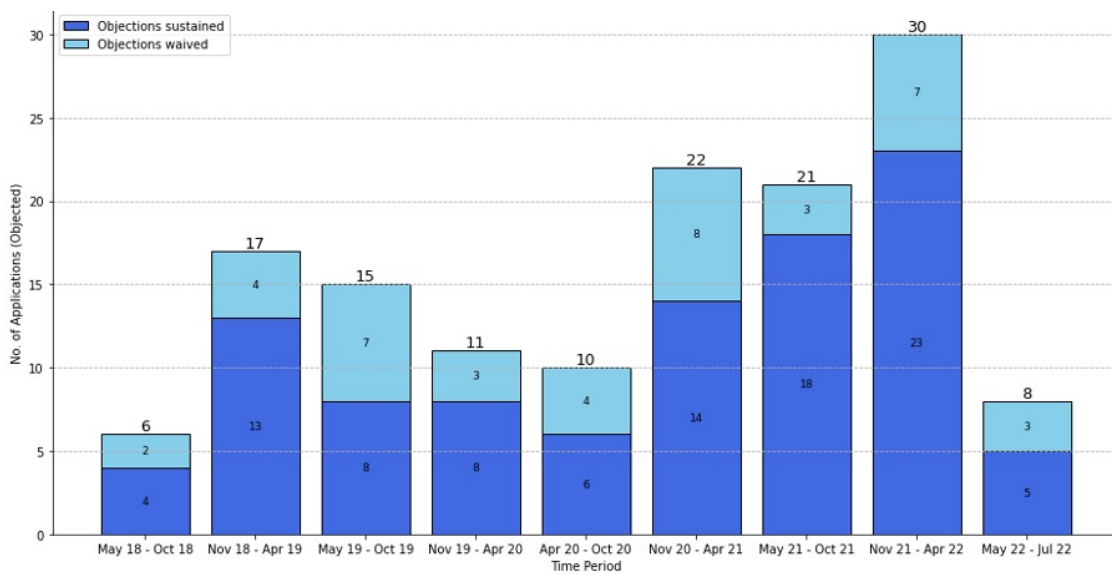


Figure 4: Number of objections raised and waived on a 6 month basis

As has been shown in Figure 1, the number of applications filed each year has been steadily increasing. However, Figure 4 only represents the data on a bi-annual basis. It does not accommodate if there was an increase in the absolute number of objections which were issued during that period. Figure 5 has been included to address this and examines the number of objections issues, waived and sustained in intervals of 100,000 applications.<sup>106</sup> It also analyzes how this rate varies depending on the time period in which the objections were raised.

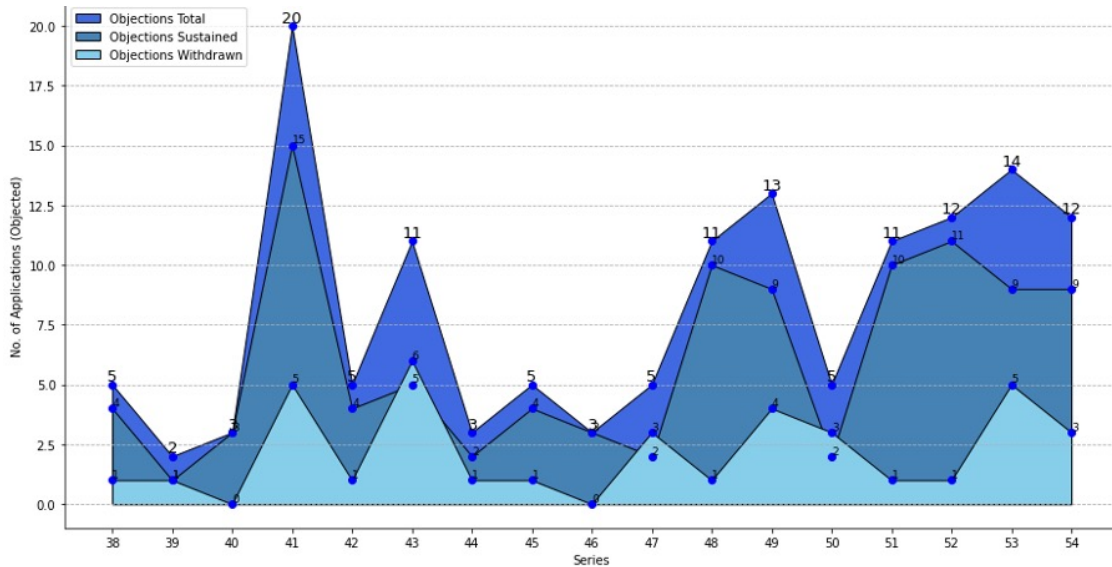


Figure 5: Number of objections issued, sustained and waived per 100,000 applications

Figure 6 presents the total number of objections raised, withdrawn and sustained under Section 9(2)(c), across various trademark classes. It reveals a striking trend: objections under Section 9(2)(c) are predominantly concentrated in three classes. Class 3 (Bleaching Preparations), Class 5 (Pharmaceutical and Veterinary products), and Class 25 (Apparel Goods) collectively yield 76 objections, eclipsing 50% of all objections. Interestingly, classes pertaining to services yield fewer objections, amounting to only 29 objections, which is less than 20% of the total objections issues under Section 9(2)(c).<sup>107</sup>

<sup>106</sup> The horizontal axis in the figure corresponds to the series of applications numbers. For example, series 42 covers marks with application number between Indian Trade Mark Application No. 4,200,000 (filed June 7, 2019) and Indian Trade Mark Application No. 4,299,999 (filed Sept. 21, 2019).

<sup>107</sup> For multiclass applications which are classified as Class 99, the authors have counted each of these as one entry in the corresponding classes. There were 6 multiclass applications: Indian Trade Mark Application

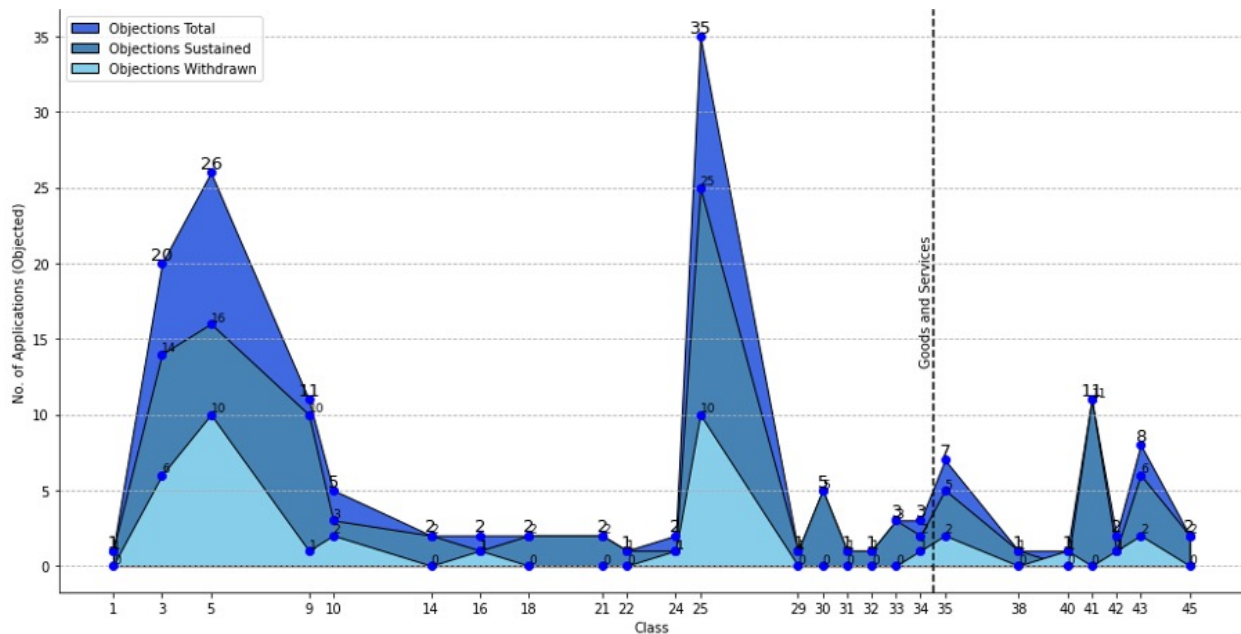


Figure 6: Number of objections issued, sustained and waived per class

The data presented in Figure 6 reveals some striking trends when compared to the total number of applications filed in each class. Out of the 1.6 million applications studied, only 120,367 were filed in Class 25 (Apparel Goods). Yet, these Class 25 applications account for 35 objections issued for containing scandalous or obscene content. This means that while Class 25 applications make up only 7.54% of the total applications, they are responsible for over 22% of the objections received under Section 9(2)(c). Similar trends can be witnessed in Class 3 (Bleaching Preparations), and Class 35 (Services for advertising and other office functions). Figure 7 further compares the percentage of applications filed in each class with the number of objections under Section 9(2)(c) within that class. These findings suggest disproportionately high rates of morality-based objections in certain trademark classes, warranting further investigation into potential reasons for such high proportions.

No. 4,185,754 (filed May 24, 2019) which was applied for Classes 3, 24, 25; Indian Trade Mark Application No. 4,188,747 (filed May 27, 2019), which was applied for Classes 3, 9, 14, 18, 25; Indian Trade Mark Application No. 4,741,941 (filed November 11, 2020) which was applied for Classes 3, 35; Indian Trade Mark Application No. 4,823,848 (filed Jan. 18, 2021) which was applied for Classes 9, 45; Indian Trade Mark Application No. 4,863,251 (filed Feb. 15, 2021) which was applied for Classes 9, 16, 35, 38, 41, 42; and Indian Trade Mark Application No. 5,251,506 (filed Dec. 17, 2021) which was applied for Classes 35, 41, 43. Given these redundancies, the total count for the following figure is 155.

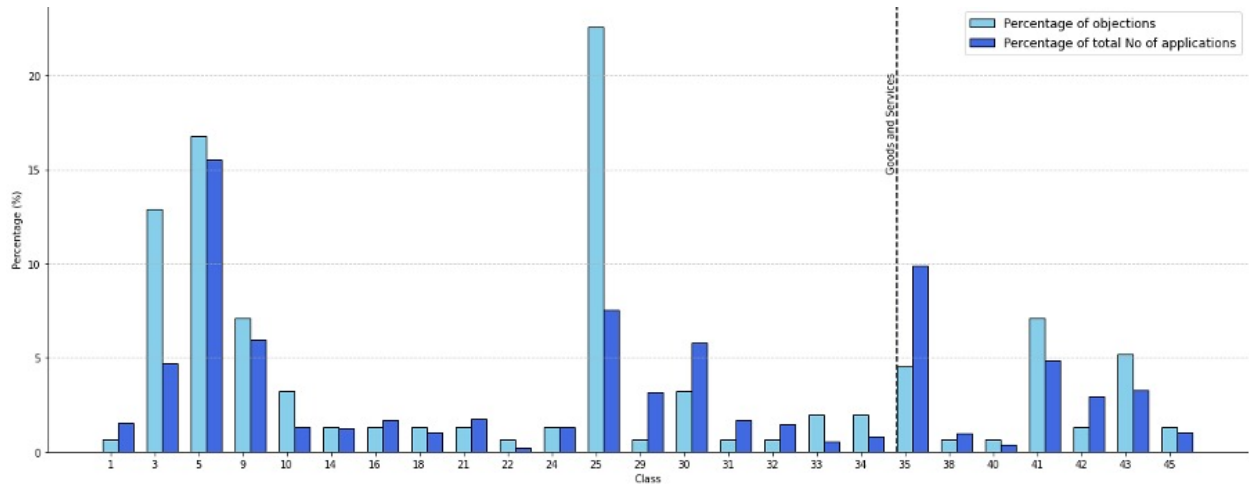


Figure 7: Comparison of percentage of total applications filed and percentage of objections issued by class

Figure 8 presents the total number of objections raised, withdrawn and sustained under Section 9(2)(c), across the different Trade Mark Offices.

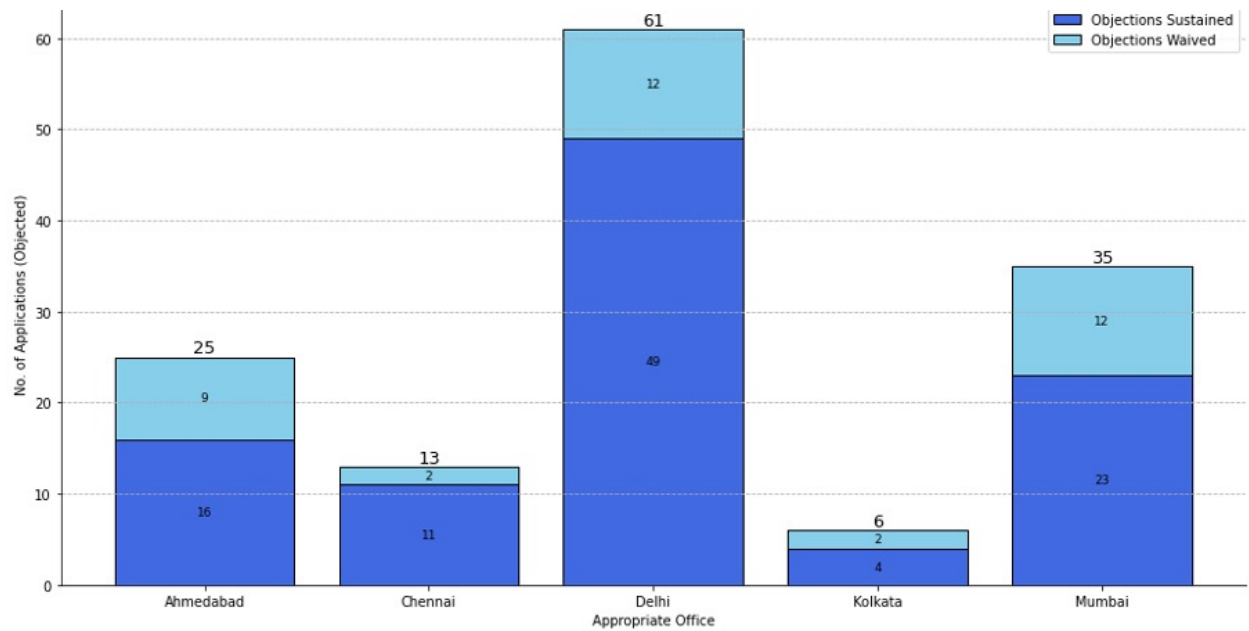


Figure 8: Comparison of objections sustained and waived across offices

The table shown below provides a comparison between the proportion of total objections issued by each office and the absolute number of applications submitted during May 2018 to July 2022 for prosecution before that office.

Appropriate Office	Number of applications filed	Percentage of applications filed	Number of applications objected under 9(2)(c)	Percentage of objections issued under S. 9(2)(c)
Ahmedabad	228,686	14.2%	25	17.86%
Chennai	312,101	19.51%	13	9.29%
Delhi	591,517	36.97%	61	43.57%
Kolkata	98,251	6.14%	6	4.29%
Mumbai	369,445	23.09%	35	25.00%

#### IV

#### TRADE MARK REGISTRY’S APPLICATION OF SECTION 9(2)(C)

As discussed in Part 1, in a previous study, we examined the scope and potential interpretation of Section 9(2)(c) by analyzing the jurisprudential lineage of the provision.<sup>108</sup> The guidelines identified through the doctrinal study were then anecdotally tested by creating a purposive sample. This sample was generated by studying the existing literature to identify potentially scandalous and obscene terms. Using these terms, the authors conducted representative searches on the Trade Marks Register to observe how such potentially objectionable content was treated in practice.

This preliminary exploration provided valuable insights into the practical application of the morality-based restrictions outlined in Section 9(2)(c). Building on these earlier findings, this part presents a comprehensive, data-driven analysis of the administration of morality-based trademark objections, using author’s dataset.

To explain the findings in a cohesive manner, the authors adopt the methodology suggested by Beebe and Fromer. In a pioneering study published in 2019, Beebe and Fromer shed light on the administration of the morality-based proscriptions in the American Trademark Law.<sup>109</sup> In order to provide evidence

<sup>108</sup> See generally Ram Mohan & Gupta, *supra* note 31.

<sup>109</sup> See generally Beebe & Fromer, *supra* note 16.

of inconsistency on the American Trademark Register, they provide three sets of evidence:<sup>110</sup>

1. Instances where relative and absolute grounds for objection were used concurrently,
2. Marks that successfully navigated morality-based objections by using vague grounds,
3. Potentially scandalous or immoral marks that evaded objections altogether.

*A. Combined Section 9(2)(c) and Section 11 objections*

After an application for registration of a trade mark is submitted, it undergoes an examination process. During the examination process, a Trade Marks Examiner scrutinizes the application based on two key criteria: absolute and relative grounds. Absolute grounds, covered by Section 9, pertain to inherent qualities of a mark that may render it objectionable.<sup>111</sup> For instance, Section 9(2)(c) prohibits the registration of marks that contain ‘scandalous’ or ‘obscene’ matter.<sup>112</sup> On the other hand, relative grounds for refusal, governed by Section 11, are attracted when the potential registration of the mark could lead to confusion in the marketplace and encroach upon rights of other proprietors.<sup>113</sup> Section 11(1) prevents the registration of mark which are similar or identical to pre-existing marks on the Trade Marks Register and are sought to be applied in reference to goods that are also similar or identical.<sup>114</sup> Section 11(2) extends the extends this protection to well-known marks, even if applied to dissimilar goods.<sup>115</sup>

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<sup>110</sup> *Id.* at 182–96.

<sup>111</sup> Trade Marks Act, 1999, § 9 (1999) (India) (Absolute grounds for refusal of registration).

<sup>112</sup> Trade Marks Act, 1999, § 9(2)(c) (1999) (India).

<sup>113</sup> Trade Marks Act, 1999, § 11 (1999) (India) (Relative grounds for refusal of registration).

<sup>114</sup> Trade Marks Act, 1999, §11(1) (India) (“(1) Save as provided in section 12, a trade mark shall not be registered if, because of—

(a) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or  
 (b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”).

<sup>115</sup> Trade Marks Act, 1999, §11(2) (India) (“(2) A trade mark which—

(a) is identical with or similar to an earlier trade mark; and  
 (b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is registered in the name of a different proprietor, shall not be registered if or to the extent the earlier trade



When an examination report combines Section 9(2)(c) and Section 11 to object to an application, it hints at a contradiction within the Registry’s decision-making process.<sup>116</sup> By citing Section 9(2)(c), the Trade Marks Registrar objects to the presence of scandalous and obscene matter in the *applied-for* mark.<sup>117</sup> By also invoking Section 11 and citing the existence of a similar registered mark, the Registrar implies an inconsistency. How can a mark, having navigated the prosecution process, be deemed confusingly similar to the *applied-for* mark potentially containing scandalous or obscene elements? This raises questions about the scrutiny applied during prosecution. Therefore, by its own admission, the Trade Marks Registry is administering Section 9(2)(c) in an inconsistent manner.

Between July 2018 and June 2022, the Trade Marks Registrar combined Section 9(2)(c) with Section 11 for 32 applications.<sup>118</sup> Comparing this to American trademark practices, it highlights a concerning trend. In Beebe and Fromer’s research, out of 1901 instances where morality-based restrictions were applied, only 114 times were they combined with relative grounds for refusal, making up less than 0.6%.<sup>119</sup> However, here, in the Indian context, this proportion increases to 2.2%.<sup>120</sup>

For instance, in March 2019, an application for registration of the mark CHOR BAZAR was filed in reference to services related to hotels and resorts (Class 43).<sup>121</sup> Objecting to the registration of the mark under Section 9(2)(c), the Trade Marks Examiner suggested that the mark contains scandalous or obscene content.<sup>122</sup> The

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mark is a well-known trade mark in India and the use of the later mark without due cause would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trade mark.”).

<sup>116</sup> The concomitant use of § 9 and § 11 is a common practice of the Indian Trade Marks Registrar. While it invokes a larger question, given the limited scope of research on this issue, the authors comment on the limited question of the interaction between Trade Marks Act, 1999, §§ 9(2)(c), 11(1), 11(2) (India).

<sup>117</sup> The term *applied-for* mark refers to the mark which has been submitted for registration.

<sup>118</sup> For a list of all the applications which received a conjoint objection under Trade Marks Act, 1999, §§ 9, 1, see Appendix 1.

<sup>119</sup> Beebe & Fromer, *supra* note 16, at 182–89.

<sup>120</sup> It should be noted that unlike Beebe and Fromer’s dataset, the present dataset includes device marks and composite marks. In some instances, the objection for relative grounds depends on words or images in the mark, which are not potentially scandalous. For example, in case of the mark FUCK CABERNET, the similar mark cited in the examination report was CABARNET SAUVIGNON. Therefore, while the scandalous part of the mark is the word ‘FUCK,’ the relative objection for the mark stems from the word, CABARNET.

<sup>121</sup> Indian Trade Mark Application No. 4,134,601 (filed Mar. 30, 2019).

<sup>122</sup> Indian Trade Mark Application No. 4,134,601, Examination Report (June 28, 2019).

Examiner also suggested that the applied-for mark was confusingly similar to a previous mark registered in Class 43, CHOR BIZARRE, and therefore the mark could not be registered.<sup>123</sup> Interestingly, when the cited mark, CHOR BIZARRE, was examined in 2012, no objections under Section 9(2)(c) were raised.<sup>124</sup>

Similarly, the mark SAX VIDEO encountered an objection due to its alleged scandalous and obscene content when proposed to be used in reference to scientific instruments, electrical devices, computers, media, and fire extinguishers (Class 9).<sup>125</sup> Additionally, it also faced objection under Section 11(1) for its perceived similarity to the registered mark SAX VIDEO PLAYER, used for computer software in Class 9.<sup>126</sup> Notably, SAX VIDEO PLAYER underwent examination just 18 months prior to the applied-for mark and did not receive any objections for containing scandalous or obscene matter.<sup>127</sup>

In 2019, an application was made to register the mark NEUD XPOSE YOURSELF for pharmaceutical and veterinary preparations (Class 5).<sup>128</sup> Despite opposing the mark for containing scandalous or obscene matter, the Examiner suggested that the mark was confusingly similar to a mark NUDE, which was already registered for a variety of healthcare goods (Class 5).<sup>129</sup>

Interestingly, the cited mark NUDE did not encounter objections for being scandalous when it underwent examination in 2008.<sup>130</sup> However, since then, it has been used as a basis for objecting to the registration of numerous marks incorporating the word 'NUDE' in Class 5, such as NUDE HAIR,<sup>131</sup> NUDE

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<sup>123</sup> *Id.*

<sup>124</sup> Indian Trade Mark Application No. 2,048,839 (filed Nov. 2, 2010); Indian Trade Mark Application No. 2,048,839, Examination Report (Jan. 23, 2012).

<sup>125</sup> Indian Trade Mark Application No. 4,298,319 (filed Sept. 19, 2019); Indian Trade Mark Application No. 4,298,319, Examination Report (Dec. 10, 2020).

<sup>126</sup> *Id.*

<sup>127</sup> Indian Trade Mark Application No. 4,176,758 (filed May 15, 2019); Indian Trade Mark Application No. 4,176,758, Examination Report (June 24, 2019).

<sup>128</sup> Indian Trade Mark Application No. 4,144,265 (filed Apr. 11, 2019); Indian Trade Mark Application No. 4,144,265, Examination Report (Aug. 8, 2022).

<sup>129</sup> Indian Trade Mark Application No. 1,556,058 (filed May 7, 2007); Indian Trade Mark Application No. 1,556,058, Examination Report (May 6, 2008).

<sup>130</sup> *Id.*

<sup>131</sup> Indian Trade Mark Application No. 3,730,705 (filed Jan. 18, 2018); Indian Trade Mark Application No. 3,730,705, Examination Report (Feb. 22, 2018).

WHEY,<sup>132</sup> and NUDEC.<sup>133</sup> Such a usage of Section 9(2)(c) by the Registrar of Trade Marks raises important questions. First, NUDE was not deemed scandalous or obscene in 2007 but was considered so in 2019. Does this suggest a potential shift towards more stringent moral standards over time? Second, the registration of a potentially scandalous or obscene word in 2007 has led to the subsequent refusal of many similar marks in the same class under Section 11. This trend can potentially hint at congestion within the Trade Marks Register, a phenomenon also observed in the American Register by Beebe and Fromer.<sup>134</sup>

In addition to the three marks discussed earlier, there are another 29 instances within the 49-month period examined in this study where Section 9(2)(c) has been invoked alongside Section 11.<sup>135</sup> Some noteworthy instances are discussed below:

- An applicant applied for the mark DICKS in reference beverage and food essentials (Class 30).<sup>136</sup> Along with an objection under Section 9(2)(c), the examiner suggested that the mark was confusingly similar to an earlier mark, DEEKS, which was used in reference to bread & pastry assortment.<sup>137</sup> The applications for the two marks were submitted with only a 25-month interval, and the application for DEEKS was passed without any objection under Section 9(2)(c).
- In March 2021, an applicant applied for a device mark, an essential feature of which was LAZYBUMS, for clothing and apparel.<sup>138</sup> The Examiner objected that the mark contains scandalous and obscene content, while also citing another mark with an identical essential feature, LAZY BUM.<sup>139</sup> The cited

<sup>132</sup> Indian Trade Mark Application No. 4,059,541 (filed Jan. 17, 2019); Indian Trade Mark Application No. 4,059,541, Examination Report (Jan. 25, 2019).

<sup>133</sup> Indian Trade Mark Application No. 2,845,848 (filed Nov. 18, 2014); Indian Trade Mark Application No. 2,845,848, Examination Report (Jan. 12, 2016).

<sup>134</sup> Beebe & Fromer, *supra* note 85, at 1021.

<sup>135</sup> Further details for the other marks can be found in Appendix 1.

<sup>136</sup> Indian Trade Mark Application No. 5,285,293 (filed Jan. 14, 2022); Indian Trade Mark Application No. 5,285,293, Examination Report (Feb. 10, 2022).

<sup>137</sup> *Id.*

<sup>138</sup> Indian Trade Mark Application No. 4,909,601 (filed Mar. 18, 2021); Indian Trade Mark Application No. 4,909,601, Examination Report (May 4, 2021).

<sup>139</sup> *Id.*

mark was examined only 4 months prior to the subject mark, yet the former was not objected to for containing scandalous or obscene matter.<sup>140</sup>

*B. Applications that overcame an objection under Section 9(2)(c)*

Once the reply to an Examination Report is submitted, and the Show Cause Hearing is conducted, if the Trade Marks Registrar is convinced by the submissions made by the applicant, his application is accepted and moves forward in the prosecution. Subsequently, it will be published in the Trade Marks Journal for public notification. A review of the various Replies to the Examination Reports filed by the applicants provides further evidence that the conduct of the Trade Marks Registrar is arbitrary and inconsistent in the administration of Section 9(2)(c).<sup>141</sup>

Amongst the 140 applications in the dataset that received an objection under Section 9(2)(c), only 38 applications managed to overcome the objection,<sup>142</sup> while 47 applications were refused by the Registrar of Trade Marks. However, the criteria used by the Registrar to evaluate the responses from applicants defending their marks against objections under Section 9(2)(c) remain vague and erratic. This issue is further exacerbated by the fact that the orders issued by the Trade Marks Registrar are summaries in nature and do not provide any explanations as to the merit or content of the marks.

This ambiguity is most clearly exemplified in the prosecution record for the mark KISS MARY, which was applied for registration in the cosmetics and toiletry preparations category (Class 3) in March 2021.<sup>143</sup> The Registrar of Trade Marks objected to its registration, citing the presence of scandalous and obscene

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<sup>140</sup> Indian Trade Mark Application No. 4,827,491, Examination Report (Jan. 30, 2021).

<sup>141</sup> One variable that cannot be accommodated in the present dataset is the arguments made by the applicant in a Show-Cause Hearing before the Registrar. There are no digitized records of the arguments made by the applicant if the Registrar schedules a Show-Cause Hearing.

<sup>142</sup> This proportion is significantly higher than the one explained in Beebe and Fromer's paper. In their dataset, 140 applications out of a pool of 1,901 moved beyond the stage of objection. This means that around 7% of the applications that received an objection for containing scandalous or immoral content were able to overcome it, and only 91 applications (less than 5%) proceeded to registration. In the present dataset, the success rate for overcoming an objection under Section 9(2)(c) is significantly higher, at 27%. See Beebe & Fromer, *supra* note 16, at 172.

<sup>143</sup> Indian Trade Mark Application No. 4,901,606 (filed Mar. 12, 2021); Indian Trade Mark Application No. 4901606, Examination Report (Mar. 26, 2021).

material.<sup>144</sup> However, in the applicant's response, they failed to address this specific objection. The only objection highlighted in the Examination Report pertained to Section 9(2)(c). The Registrar did not make any references to Section 11, and no confusingly similar marks were cited in the Examination Report. Despite the only objection relating to absolute grounds, the reply mischaracterized the objection and defended the mark against the cited marks in the examination report, even though no such marks were cited by the Registrar. The applicant failed to defend against any objections related to Section 9, let alone Section 9(2)(c) specifically. Despite the erroneous Reply, the Registrar accepted the application on January 24, 2024, and it was advertised in the Trade Marks Journal on February 5, 2024.<sup>145</sup>

Within the cohort of 47 applications, a recurring theme emerges concerning objections under Section 9(2)(c). Applicants frequently resort to invoking the distinctiveness of their mark. However, this strategy does not consistently sway the Registrar's decision, leading to inconsistencies in the application process.

For example, in March 2019, an applicant applied for the mark NUDES for providing services as an Architectural Firm (Class 42).<sup>146</sup> The Registrar cited Section 9(2)(c) and objected to the mark for containing scandalous or obscene content.<sup>147</sup> The applicant defended the mark by claiming that the mark was a coined and invented term, which had no reference to the services offered under the mark. These submissions should have no bearing on whether the mark contains scandalous or obscene matter. Regardless, the mark was accepted by the Registrar and was published in the Trade Marks Journal.<sup>148</sup> Similar ambiguity is apparent in the cases of various other marks, such as HORNI, which was applied for registration concerning medicinal and pharmaceutical preparations (Class 5),<sup>149</sup> CEX,<sup>150</sup> BOOBS & BUDS,<sup>151</sup> and RIBALD THE NEECH,<sup>152</sup> all of which were applied for registration relating to clothing and apparel (Class 25).

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<sup>144</sup> Indian Trade Mark Application No. 4,901,606, Examination Report (Mar. 26, 2021).

<sup>145</sup> Indian Trade Mark Application No. 4,901,606 (filed Mar. 12, 2021).

<sup>146</sup> Indian Trade Mark Application No. 4,116,164 (filed Mar. 13, 2019); Indian Trade Mark Application No. 4,116,164, Examination Report (Apr. 23, 2019).

<sup>147</sup> *Id.*

<sup>148</sup> Indian Trade Mark Application No. 4,116,164 (filed Mar. 13, 2019).

<sup>149</sup> Indian Trade Mark Application No. 4,148,440, Examination Report (May 31, 2019).

<sup>150</sup> Indian Trade Mark Application No. 4,391,659, Examination Report (Jan. 16, 2020).

<sup>151</sup> Indian Trade Mark Application No. 5,335,706, Examination Report (Mar. 29, 2022).

<sup>152</sup> Indian Trade Mark Application No. 5,290,558, Examination Report (Feb. 15, 2022).

Conversely, appeals to distinctiveness have remained unsuccessful in many cases. For example, in March 2021, an applicant applied for the registration of the mark NUDE ROMANCE, to be used in reference to non-medicated cosmetics and toiletry preparations (Class 3).<sup>153</sup> When the application was objected to for containing scandalous or obscene content, the applicant invoked the inherent distinctiveness of the mark, claiming that the mark was a coined term and did not bear any inherent connection to or meaning for the goods in reference to which it was adopted.<sup>154</sup> However, the Registrar was not convinced by the applicant's submissions and the application was refused.<sup>155</sup>

Identical treatment has been afforded to various other marks. In April 2019, an applicant applied for the registration of three marks, FUCK CHARDONNAY,<sup>156</sup> FUCK MERLOT<sup>157</sup> and FUCK CABERNET,<sup>158</sup> in reference to alcoholic preparations. All three applications were objected to for containing scandalous or obscene content. In their reply, the applicant appealed to the inherent and applied distinctiveness of the marks. The Registrar refused to waive the objections and held that:

[T]he content of the mark being "FUCK" means have sexual intercourse with (someone). I found this content of mark scandalous. The applicant failed to overcome the objections under section 9(2) (c) raised in the examination report, hence, refused.<sup>159</sup>

Similarly, when the registration for the mark SANSKARI SEX was objected to for containing scandalous or obscene content, the applicant appealed to the inherently distinctive nature of the mark.<sup>160</sup> However, the Registrar refused the application and held that "[t]he applicant submitted that the applied mark is coined, innovative, unique combination and distinctive. It does not designate any characteristics of

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<sup>153</sup> Indian Trade Mark Application No. 4,921,530 (filed Mar. 25, 2021); Indian Trade Mark Application No. 4,921,530, Examination Report (Apr. 16, 2021).

<sup>154</sup> Indian Trade Mark Application No. 4,921,530, Examination Report (Apr. 16, 2021).

<sup>155</sup> Indian Trade Mark Application No. 4,921,530 (filed Mar. 25, 2021).

<sup>156</sup> Indian Trade Mark Application No. 4,158,615 (filed Apr. 26, 2019).

<sup>157</sup> Indian Trade Mark Application No. 4,158,636 (filed Apr. 26, 2019).

<sup>158</sup> Indian Trade Mark Application No. 4,158,869 (filed Apr. 26, 2019).

<sup>159</sup> Indian Trade Mark Application No. 4,158,636, Refusal Notice (Dec. 23, 2019). Acceptance or Refusal orders are usually unreasoned and only include the final decision of the Registrar. Only a few orders provide explicit reasons for the acceptance or refusal. The authors have extracted the said reasons where available.

<sup>160</sup> Indian Trade Mark Application No. 4,344,760, Virtual Hearing Cell Order (July 20, 2023).

the applied services. Therefore, prayed for acceptance of the mark. However, the applied mark consists of obscene or scandalous matters which is prohibited u/s 9(2)(c) of the Trade Marks Act, 1999. Hence, refused.”<sup>161</sup>

The analysis of the dataset reveals that appeals to the distinctiveness of a mark represent just one approach among many that applicants employ in responding to objections under Section 9(2)(c). The outcomes are inconsistent—for some marks, such appeals to distinctiveness were sufficient for the Trademark Registrar to overcome the morality-based objection, while in other cases, they were not successful. This suggests that the standards and decision-making criteria used by the Registrar to evaluate responses to Section 9(2)(c) objections remain unclear and unpredictable. The lack of a consistent, reasoned approach undermines the transparency and fairness of the trademark registration process.

*C. Applications for potentially Scandalous and Obscene marks that never received an objection under Section 9(2)(c)*

The inconsistency in the conduct of the Trade Marks Registry is not limited to waiver of objections, it also extends to the issuance of objections. For applications filed between June 2018 and July 2022, the Trade Marks Registry did not issue objections under Section 9(2)(c) to significant number of applications that, based on the Registry’s own standards, should have been considered immoral and scandalous. In order to identify such applications, the authors studied the Trade Marks Journal to identify applications which were similar to the marks intercepted by the Registry for containing scandalous and obscene content.

For example, in November 2018, an applicant applied for registration of the mark NAKED AND RAW COFFEE FACE WASH in reference to cosmetics and toiletries (Class 3).<sup>162</sup> The Mumbai Trade Marks Office opposed the registration of the mark under Section 9(2)(c).<sup>163</sup> However, when the same applicant applied

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<sup>161</sup> *Id.*

<sup>162</sup> Indian Trade Mark Application No. 3,992,781 (filed Nov. 5, 2018).

<sup>163</sup> Indian Trade Mark Application No. 3,992,781, Examination Report (Dec. 3, 2018). The objection was subsequently waived after the applicant submitted a Reply to the Examination Report, in which he claimed that “the word NAKED should be read in conjunction with RAW, COFFEE and FACE WASH and when read conjointly it does not amount to any obscene or scandalous matter because the word NAKED is used as a general term to denote coffee. It may further be pleaded that mere using of word NAKED doesn’t amount to the attraction of Section 9(2)(c) of Trademark Act as it is not obscene and scandalous because the word Naked means anything expressing or suggesting unchaste and lustful ideas which means for a word to come

for the marks NAKED & RAW COFFEE FACE SCRUB<sup>164</sup> and NAKED & RAW COFFEE BODY SCRUB<sup>165</sup> in the same class before the same office, no objections under Section 9(2)(c) were raised. There was only a difference of seven days between the publication of the examination report for the first mark and the remaining two. In fact, the same applicant also applied for the mark NAKED AND RAW in Class 3 before the Mumbai Trade Marks Office, and the mark proceeded to registration without any objection under Section 9(2)(c).<sup>166</sup> Furthermore, there are many other marks with the constituent word NAKED already registered in Class 3, including NAKED TRUTH BY MYGLAMM,<sup>167</sup> NAKED URBAN DECAY,<sup>168</sup> and NAKED SKIN.<sup>169</sup> None of these marks received any objections for containing scandalous or obscene content.

A similar case can be highlighted in reference to Tobacco Products in Class 34. An applicant applied for two device marks, the essential textual elements of which were HASH<sup>170</sup> and HASH LIGHTS.<sup>171</sup> Both marks were filed before the Delhi Office and were examined within a 16-month interval. Yet while the second mark was objected for containing scandalous and obscene content,<sup>172</sup> the first mark received no such objection.<sup>173</sup> This was also noted by the applicant in his Reply to the Examination Report for the second mark.<sup>174</sup>

Such a treatment can also be witnessed when the applied-for marks contain non-English words. In March 2019, the mark CHOR BAZAR, was applied

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under the definition of obscenity, it must not arouse sexual desire which is absent in the instant application as this application is for a face wash only which do not contain any such abovementioned ingredients.”

<sup>164</sup> Indian Trade Mark Application No. 3,992,780, Examination Report (Dec. 11, 2018).

<sup>165</sup> Indian Trade Mark Application No. 3,992,779, Examination Report (Dec. 11, 2018).

<sup>166</sup> Indian Trade Mark Application No. 5,610,348 (filed Sept. 15, 2022).

<sup>167</sup> Indian Trade Mark Application No. 4,425,513 (filed Jan. 30, 2020); Indian Trade Mark Application No. 4,425,513, Examination Report (Feb.13, 2020).

<sup>168</sup> Indian Trade Mark Application No. 2,440,524 (filed Dec. 11, 2012); Indian Trade Mark Application No. 2,440,524, Examination Report (Dec. 12, 2013).

<sup>169</sup> Indian Trade Mark Application No. 2,440,525 (filed Dec. 11, 2012); Indian Trade Mark Application No. 2440525, Examination Report (Dec. 12, 2013).

<sup>170</sup> Indian Trade Mark Application No. 4,432,682 (filed Feb. 6, 2020); Indian Trade Mark Application No. 4,432,682, Examination Report (Mar. 4, 2020).

<sup>171</sup> Indian Trade Mark Application No. 5,053,495 (filed July 21, 2021); Indian Trade Mark Application No. 5,053,495, Examination Report (Aug. 5, 2021).

<sup>172</sup> Indian Trade Mark Application No. 5,053,495, Examination Report (Aug. 5, 2021).

<sup>173</sup> Indian Trade Mark Application No. 4,432,682, Examination Report (Mar. 4, 2020).

<sup>174</sup> Indian Trade Mark Application No. 5,053,495, Reply to Examination Report (July 21, 2021).



in reference to providing services related to hotels, resorts, etc. (Class 43).<sup>175</sup> The Chennai Trade Marks Office objected the mark under Section 9(2)(c).<sup>176</sup> Interestingly, not only did the Registrar suggest that the mark was confusingly similar to a previously existing mark, CHOR BIZAREE,<sup>177</sup> they also omitted to consider the fact that there were various other marks registered in the same class which did not receive an objection for containing scandalous and obscene content. Some of these marks are MAAKHAN CHOR,<sup>178</sup> BIRYANI CHOR<sup>179</sup> and KAAMCHOR.<sup>180</sup>

One of the clearest enunciations of the inconsistency in administration of Section 9(2)(c) can be witnessed by studying marks where a composite component is the word SEXY. For example, between June 2018 and July 2022, the Registrar of Trade Marks objected four marks with the constituent word SEXY: I'MSEXY,<sup>181</sup> JUSTSXY,<sup>182</sup> FEEL SEXY WITH POP CULTURE,<sup>183</sup> and SEXY BRA.<sup>184</sup> Within this time period, there were five other applications which passed the examination stage without being objected under Section 9(2)(c): SEXYBEAST,<sup>185</sup> SEXYBUST,<sup>186</sup> SEXYFISH,<sup>187</sup> PLAY SEXY,<sup>188</sup> and LA SENZA 24 SEXY.<sup>189</sup>

<sup>175</sup> Indian Trade Mark Application No. 4,134,601 (filed Mar. 30, 2019).

<sup>176</sup> Indian Trade Mark Application No. 4,134,601, Examination Report (June 28, 2019).

<sup>177</sup> *Id.*

<sup>178</sup> Indian Trade Mark Application No. 2,896,645 (filed Feb. 9, 2015).

<sup>179</sup> Indian Trade Mark Application No. 3,046,361, Examination Report (May 27, 2016).

<sup>180</sup> Indian Trade Mark Application No. 3,485,330, Examination Report (Mar. 3, 2017).

<sup>181</sup> Indian Trade Mark Application No. 4,185,753 (filed May 24, 2019); Indian Trade Mark Application No. 4,185,753, Examination Report (July 4, 2019).

<sup>182</sup> Indian Trade Mark Application No. 4,185,754 (filed May 24, 2019); Indian Trade Mark Application No. 4,185,754, Examination Report (July 4, 2019).

<sup>183</sup> Indian Trade Mark Application No. 4,928,075 (filed Mar. 31, 2021); Indian Trade Mark Application No. 4,928,075, Examination Report (May 12, 2021).

<sup>184</sup> Indian Trade Mark Application No. 4,957,580 (filed Apr. 27, 2021); Indian Trade Mark Application No. 4,957,580, Examination Report (May 25, 2021).

<sup>185</sup> Indian Trade Mark Application No. 5,041,399 (filed July 12, 2021); Indian Trade Mark Application No. 5,041,399, Examination Report (July 22, 2021).

<sup>186</sup> Indian Trade Mark Application No. 4,673,633 (filed Sept. 25, 2020); Indian Trade Mark Application No. 4,673,633, Examination Report (Oct. 19, 2020).

<sup>187</sup> Indian Trade Mark Application No. 4,200,537 (filed June 7, 2019); Indian Trade Mark Application No. 4,200,537, Examination Report (Aug. 5, 2019).

<sup>188</sup> Indian Trade Mark Application No. 4,111,366 (filed Mar. 8, 2019); Indian Trade Mark Application No. 4,111,366, Examination Report (Mar. 29, 2019).

<sup>189</sup> Indian Trade Mark Application No. 3,349,743 (filed Aug. 30, 2016); Indian Trade Mark Application No. 3,349,743, Examination Report (Dec. 12, 2020).

Another trend that can be witnessed relates to moral paternalism and how it affects the decisions made by Trade Marks Examiners. In January 2021, an application for registration of the mark ONE DOLLAR SEX CLUB was filed before the Delhi Trade Marks Office in reference to dating and matchmaking services under Class 9 and 45.<sup>190</sup> The concerned examiner issued an objection under Section 9(2)(c), suggesting that the mark contained scandalous and obscene matter.<sup>191</sup> The decision of the Registrar is difficult to reconcile with the fact that there are many marks in Class 45 which include the constituent word SEX. Some examples include, SSS STOP SEX SLAVERY, applied in reference to “providing social services in relation to prevention of human slavery and exploitation,”<sup>192</sup> PROJECT SAMVAAD: CREATING A SAFE SPACE FOR SEXUAL AND SOCIO-EMOTIONAL WELLBEING,<sup>193</sup> and SAFE SEX WEEK<sup>194</sup> applied for providing legal, personal and social services.

The varying treatment of marks within the same class suggests that Trade Marks Examiners base their moral standards on the specific goods and services associated with the mark. Such a nuanced approach is important for determining morality-based proscriptions in trademark law.<sup>195</sup> However, it is important that any discretion awarded to the Trade Marks Examiners is constrained by broad guidelines and principles for its determination. As highlighted in the previous study, such guidelines are completely absent as is evidenced by the conduct of the Trade Marks Registry. Such discretion can lead to inconsistent results. As the present dataset reveals, only 25% of the applications that received an objection under Section 9(2)(c) successfully navigated the objections. The remaining 36% remain stuck in the objection process, while 32% were refused. Therefore, an office objection under Section 9(2)(c) poses a significant barrier to registration of a trademark and needs to be administered consistently and methodologically.

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<sup>190</sup> Indian Trade Mark Application No. 4,823,848 (filed Jan. 18, 2021).

<sup>191</sup> Indian Trade Mark Application No. 4,823,848, Examination Report (Jan. 22, 2021).

<sup>192</sup> Indian Trade Mark Application No. 2,045,207 (filed Oct. 27, 2010); Indian Trade Mark Application No. 2,045,207, Examination Report (Mar. 9, 2012).

<sup>193</sup> Indian Trade Mark Application No. 4,882,994 (filed Feb. 27, 2021); Indian Trade Mark Application No. 4,882,994, Examination Report (Mar. 10, 2021).

<sup>194</sup> Indian Trade Mark Application No. 4,068,024 (filed Jan. 25, 2019); Indian Trade Mark Application No. 4,068,024, Examination Report (Feb. 9, 2019).

<sup>195</sup> In a previous study, we have strongly argued in favor of such a nuanced analysis. Ram Mohan & Gupta, *supra* note 31, at 22–29. *See also* Scardamaglia, *supra* note 54, at 629.

## DISCUSSION AND CONCLUSION

The examination of morality-based proscriptions in trademark law, both internationally and within the Indian context, highlights the complexities and inconsistencies inherent in such regulations. The previous study conducted by the authors revealed the lack of clear definitional and guiding standards to govern the application Section 9(2)(c) of the Indian Trade Marks Act 1999.<sup>196</sup> By creating and leveraging a novel dataset, this study provides empirical evidence of the inconsistencies in the administration of the provision. While these complexities are innate to the nature of morality-based provisions, acknowledging their existence is the crucial first step towards mitigating them.

While engaging with this issue, it should be noted that trademark laws assimilate a complex paradox. On the one hand, it regulates commercial expression, and it is aimed at improving market efficiencies and reducing consumer search costs. On the other hand, trademarks can become powerful expressions of political, social, and expressive speech.<sup>197</sup> Professor Katyal suggests that this complexity arises because of trademark law’s inherent conflict between two metaphors: the marketplace of goods and the marketplace of ideas.<sup>198</sup> While the marketplace of goods is premised on fixed nature of property rights, the marketplace of ideas is premised on dynamism and fluidity.<sup>199</sup> Thus, trademarks can have a fixed meaning for use in trade but also an expressive meaning which is fluid, and can take on different meanings.

This dynamism is best explained by reference to one of the trademark applications intercepted by the authors’ dataset. In February 2022, Isha Yadav, a doctoral student from a public university in India, applied for the trademark MUSEUM OF RAPE THREATS AND SEXISM.<sup>200</sup> She applied the mark in reference to training, education, entertainment and cultural services. Possibly because the word “rape” forms part of the trademark, the Registry cited an

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<sup>196</sup> Ram Mohan & Gupta, *supra* note 31, at 29.

<sup>197</sup> For example, see the potential of the Barbie mark. From an important commercial moniker for Mattel to an immutable social icon, the Barbie trademark is the prototypical example of this tension. See M. P. Ram Mohan & Aditya Gupta, *Litigating Barbie: Trademark Infringement, Parody, and Free Speech*, 47 DEL. J. CORP. L. 33, 35–36 (2022).

<sup>198</sup> Sonia K. Katyal, *Trademark Intersectionality*, 57 UCLA L. REV. 1601, 1601 (2010).

<sup>199</sup> *Id.* at 1605.

<sup>200</sup> Indian Trade Mark Application No. 5,331,306 (filed Feb. 16, 2022).

objection under Section 9(2)(c).<sup>201</sup> However, a basic search of the context in which the mark is applied reveals that Ms. Yadav has been engaged in memorializing and documenting instances of violence against women in digital formats.<sup>202</sup> In one of her social media posts, she explains her project and says:

I'm looking for women who've received sexist comments, misogynist slurs, rape threats or unsolicited genitalia, or have been violated and harassed on any social media platforms, either in comment sections or inboxes.

I'm collecting these screenshots and curating a digital installation, where I'm creating a digital collage of \*all the shit womxn go through\*, online, only for being themselves.

I hope to memorialise the verbal violence, visualize the effect of this violence, and explore the sense of solidarities among women and this part of our lives. The exhibitions serves as a space of intervention into the ideas of consent, coercion, harassment, and assault. I invite views to engage with the act of violation, power politics, and the inflicted trauma of verbal violence, and tethered sense of agency, through the medium of screenshots in the installation.<sup>203</sup>

Ms. Yadav's case serves as the prototypical example of the inherent conflict in trademark law. The remit of her mark is not limited to its commercial function, it embodies a powerful social and political comment. Despite its potentiality, the mark is now stuck in an administrative tussle, and, as the present study would imply, she has only a 27% chance of navigating this tussle successfully.

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<sup>201</sup> Indian Trade Mark Application No. 5,331,306, Examination Report (Mar. 24, 2022).

<sup>202</sup> See Anjani Chadha, *Lifting the Vile Veil*, INDULGE (Jan. 15, 2022, 1:58 AM), <https://www.indulgexpress.com/msociety/2022/Jan/15/lifting-the-vile-veil-38492.html> [https://perma.cc/KKF9-JKJW]; Aamna, *Part Woolf/Part Gogh: A Peek at Isha Yadav's Life-Sized Canvas*, FEMINISM IN INDIA (Jun. 30, 2020), <https://feminisminindia.com/2020/06/30/peek-at-isha-yadavs-life-sized-canvas> [https://perma.cc/UU25-UFR5].

<sup>203</sup> MuseumofRapeThreats&Sexism (@museumofrapethreats), INSTAGRAM (Nov. 25, 2019), [https://www.instagram.com/p/B5St9XYB6fo/?img\\_index=4](https://www.instagram.com/p/B5St9XYB6fo/?img_index=4) [https://perma.cc/ELY9-EDJ3].

APPENDIX<sup>204</sup>

**Appendix 1:** Applications which received concomitant objections under Section 9(2)(c) and Section 11

TM applied for (Class)	Application No(Date of application)	Similar mark (Class)	Similar mark app no (Date of application)
POROGARA-1- Class: 5	3847916 Date: 31/05/2018	PROGRA Class: 5	1422140 Date: 17/02/2006
Easy Life Ultra Class: 5	3948141 Date: 18/09/2018	Easylife Class: 5	1047087 Date: 24/09/2001
		Easylife Fresh Class: 5	2458751 Date: 11/01/2013
		Easy To Life Class: 5	3373617 Date: 28/09/2016
Chor Bazar Class: 43	4134601 Date: 30/03/2019	Chor Bizzare Class: 43	2048839 Date: 02/11/2010
NEUD XPOSE YOURSELF Class: 5	4144265 Date: 11/04/2019	Xpose Class: 5	960725 Date: 04/10/2000
		Nude Class: 5	1556058 Date: 07/05/2007
FUCK CABERNET Class: 33	4158869 Date: 26/04/2019	Cabarnet Saubignon(label) Class: 33	1519793 Date: 22/11/2006
Kamashastr Class: 5	4175585 Date: 14/05/2019	Kamashastram Class: 5	3175335 Date: 03/02/2016
KickAss Class: 3	4217864 Date: 26/06/2019	Kick Class: 3	2535905 Date: 22/05/2013
		Kick Class: 3	2781774 Date: 28/07/2014
INDIE MODA Class: 25	4249938 Date: 29/07/2019	Indi Moda Class: 25	4169270 Date: 07/05/2019
SAX VIDEO Class: 9	4298319 Date: 19/09/2019	Sax Class: 9	3754007 Date: 20/10/2017

<sup>204</sup> More details on the trademarks included in the dataset can be found in the appendices of the former version of this paper. See Ram Mohan & Gupta, *supra* note 31, at 36–72 (listing the trademark applications included in this dataset that were abandoned after receiving the Examination Report, the trademark applications which overcame an objection under Section 9(2)(c), the applications which received an objection under Section 9(2)(c) between June 2018 and July 2022, and the applications for potentially Scandalous and Obscene marks that never received an objection under Section 9(2)(c)).

			Sax video player Class: 9	4138425 Date: 05/04/2019
			Sax Video Player Logo Class: 9	4176758 Date: 15/05/2019
HORNY GRA Class: 5	4301361 Date: 23/09/2019	Horni Class: 5		4148440 Date: 16/04/2019
SANSKARI SEX Class: 41	4344761 Date: 12/11/2019	Sanskhar (Label) Class: 41		1528436 Date: 06/02/2007
		Sanskhar Class: 41		1838719 Date: 13/07/2009
		Sanskhar with device of kids Class: 41		2702579 Date: 20/03/2014
		Each alphabet is represented in different colored squares Class: 41		3515739 Date: 28/03/2017
While London Class: 3	4455581 Date: 27/02/2020	Whites of London (Label) Class: 3		1487249 Date: 13/09/2006
JONA APPETITE POWER Class: 5	4463714 Date: 05/03/2020	Jona Class: 5		2279487 Date: 08/02/2012
PRAMOVIT+ Class: 5	4658286 Date: 16/09/2020	Promovit Class: 5		2627260 Date: 13/11/2013
TALATIN 30 Class: 5	4704748 Date: 16/10/2020	Talapin Class: 5		1876542 Date: 26/10/2009
MURLI BLACK MAGIC Class: 3	4778977 Date: 13/12/2020	Black Magic Class: 3		926013 Date: 22/05/2000
		Black Magic Incense Sticks (label) Class: 3		986019 Date: 25/01/2001
		Murli Dhoop Class: 3		1368186 Date: 01/07/2005
		Murli Class: 3		1968300 Date: 19/05/2010
		Murli (Device) Class: 3		2341058 Date: 31/05/2012
		Murli Class: 3		2516529 Date: 19/04/2013
Lazybums Class: 25	4909601 Date: 17/03/2021	Device Mark Class: 25		4827491 Date: 20/01/2021

Feel Sexy With Pop Culture Class: 25	4928075 Date: 31/03/2021	Sexy Silk	3490332
		Class: 25	Date: 23/02/2017
		Sexy and Broke	3593890
		Class: 25	Date: 18/07/2017
		Sexy and Broke	3593891
		Class: 25	Date: 18/07/2017
1857REVOLTEA CAFE FOR THE REVOLUTIONARY ORGASM Class: 25	4962348 Date: 01/05/2021	Sexy Bust	3661801
		Class: 25	Date: 24/10/2017
		Sexy Fish	4200537
		Class: 25	Date: 07/06/2019
		Sexy Flexy	4354462
		Class: 25	Date: 21/11/2019
Pemi Class: 25	5078928 Date: 07/08/2021	1857	4088622
		Class: 25	Date: 15/02/2019
Kamatoys: Unizip for more happiness Class: 10	5082265 Date: 10/08/2021	1857 Supply & Co.	4155683
		Class: 25	Date: 23/04/2019
		Pami	1311780
		Class: 25	Date: 28/09/2004
		Kama Sutra	607037
		Class: 10	Date: 17/09/1993
		Kama Sutra Exotica	1052185
		Class: 10	Date: 15/10/2001
		KamaSutra(label)	1517212
		Class: 10	Date: 03/01/2007
		Kamasutra (special form writing)	1517215
		Class: 10	Date: 03/01/2007
Kama Sutra	1517216		
Class: 10	Date: 03/01/2007		
Kamagni	1838907		
Class: 10	Date: 13/07/2009		
KAMASUTRATOYS	4042679		
Class: 10	Date: 31/12/2018		
KamaSutra	4227345		
Class: 10	Date: 06/07/2019		
Kama	4696956		
Class: 10	Date: 10/10/2020		
Kamamoods	4766227		
Class: 10	Date: 03/12/2020		
Kamajoy: A ride to euphoria	4769301		
Class: 10	Date: 05/12/2020		

Rapchik Class: 5	5120990 Date: 07/09/2021	Rapicheck Class: 5	1366994 Date: 27/06/2005
		Rapichek Class: 5	1420031 Date: 08/02/2006
She Angel Class: 25	5124517 Date: 09/09/2021	Angel Class: 25	580049 Date: 31/08/1992
		Angels Class: 25	608563 Date: 05/10/1993
		Angels (label) Class: 25	955278 Date: 12/09/2000
		Angel Sarees Class: 25	2330295 Date: 11/05/2012
		Angel Class: 25	4509946 Date: 26/05/2020
DD DRUNK N DRIVE DRINK HEALTHY . DRIVE SAFELY Class: 43	5175813 Date: 16/10/2021	O & M'S DRINK & DRIVE Class: 43	4429543 Date: 04/02/2020
		DND Drink & Dine Class: 43	4679913 Date: 29/09/2020
Linga Class: 31	5279876 Date: 11/01/2022	LINGA Class: 31	5202992 Date: 09/11/2021
Afroasia V-18 Class: 5	5282887 Date: 13/01/2022	V-18 Long & Safe Class: 5	4663576 Date: 19/09/2020
Dicks Class: 30	5285293 Date: 14/01/2022	Deeks Class: 99	4188451 Date: 05/03/2019
Rocket Man 100 Class: 5	5312073 Date: 03/02/2022	Rocketm Class: 5	3135386 Date: 22/12/2015
		Rocketgun Class: 5	4170659 Date: 08/05/2019
Alira Beauty Class: 25	5347803 Date: 27/02/2022	Ellira Class: 25	4957098 Date: 26/04/2021
		Elira Class: 25	5268906 Date: 31/12/2021
RIBVA Class: 3	5382090 Date: 24/03/2022	Riba Class: 3	3751784 Date: 13/02/2018
		Ribha Class: 3	3783476 Date: 20/03/2018
STANMARK'S Class: 5	5384366 Date: 25/03/2022	Stanmark Class: 5	933241 Date: 20/06/2000
		KABZRELIEF Class: 5	4707615 Date: 18/10/2020
		Kabjrelief Class: 5	5266554 Date: 29/12/2021