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Ticker Symbols and Trade Marks

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Ticker symbols and trade marks are two different tools, which influence consumers in their economic decision making. Both provide set of relevant information about the field with which they are connected. Trade Mark help to differentiate goods and services of one manufacturer from the other and ticker symbol helps an investor to identify the stocks/shares of various company on which he is planning to invest. This article tries to bring out the correlation between trade marks and ticker symbols and the need for a proper legislation.

1. Introduction

To "trade" means to buy and sell in the jargon of the financial markets. Trading could include goods or services or it may be shares or securities. May it be a trade market or a share market,¹ competition is the common element involved in the market features. To create a market potential, the traders have to cope with the competition. It is a constant endeavour for companies to focus their attention on increasing market share in comparison to their competitors. Competitors duplicating the marketing ideas of other companies to enhance their business performance are not uncommon. Strategies which are hard to duplicate by competitors are those which rely on the intangible assets of the company such as corporate culture and brand image. Trade Mark is one of such intangible assets by which competition is enhanced in the product market.

Similarly, in stock market, to identify the shares of one company from other unique characters are used, namely ticker symbols. Ticker symbols are an important distinguishing element for issuers and exchanges.

2. Trade Mark

2.1 History and Meaning

Trade mark is a form of the intellectual property protection. It is the property of the proprietor, who has acquired a value in the mark by its continuous use. The intellectual content of trade mark is entirely different from other categories of intellectual properties, since its creation has nothing to do with the intellectual labour of human being.² The property rights in the marks are obtained purely by continuous and open use. The purpose of marking is not only to indicate the origin or quality but also to indicate

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1 A stock market is a public market for the trading of company stock and derivatives at an agreed price; these are securities listed on a stock exchange as well as those only traded privately.

2 N.S.Gopalakrishnan, Intellectual Property And Criminal Law, National Law School of India University, Bangalore (1994) p.214.

the ownership. In ancient times, the marking was used to indicate that a particular thing was a royal property.³ There were compulsory marking on the goods by the administrative authorities for the purpose of finding out and punishing the traders for producing defective goods. The consumer interest and the producers' interest were not of significance.

When the trade expanded, the goods began to travel to distant places. It was not often possible for the consumer to know the real manufacturer or source of the goods, since there was no direct connection between the consumer and the manufacturer. This caused the evolution of trade mark to be used as an identifier of the source of goods rather than the ownership.

Modern use of trade marks is also to assure the consumers that the goods to which they are attached possess the prescribed qualities. In order to make economic decisions, people rely on variety of information from various sources such as personal experiences, advertisements, various trade magazines, etc. This information has great influence on the consumer choice. The rationale for the protection of modern trade mark is framed based on this information. The consumer should be made in a position to differentiate a particular product from other similar products arriving in the market from that of other producers. Thus, the trade mark acts as an indicator of source, helping the consumer to make a wise choice.

2.2 Role and Functions of Trade Mark

Trade marks help the evolution of economy and society; they also help to

Modern use of trade marks is also to assure the consumers that the goods to which they are attached possess the prescribed qualities

create a better system for selling services and products. The name one selects as a trade mark represents his products/services quality and the company's goodwill. Thus, the trade marks play an important role for the commercialisation and growth of the industry. Since the trade mark associate the product with the manufacturer, generally there is only one person or authority behind the creation of the trade mark. Moreover, the trade mark is treated as the private property of the manufacturer, such as a company or an individual.

Large investments are made for developing a trade mark, associated reputation in the market, maintaining the level of quality assured and for the advertisement of the marks. A strong brand induces consumers to return and purchase new products that contain the same brand name, causing the brand to become a valuable asset, embodying its accumulated goodwill. However, to be an efficient indicator of source and quality, a brand should be exclusive to the service provider and manufacturer. This exclusivity can be secured by trade mark protection for which the brand must meet certain criteria. It must be distinctive and should be differentiated from previously existing marks⁴. Thereby making a trade mark an important asset of the firm, whose value may sometime far beyond the physical asset of the Company.⁵

3 Frank I. Schechter, "The Rationale Basis for Trademark Protection", 40 Harv. L. Rev. 814 (1926-27).

4 Article 15.1 of the TRIPS Agreement has the following definition for trade mark: "Any sign or any combination of signs capable of distinguishing goods or services of one undertaking from that of the other undertaking, shall be capable of constituting a trade mark". It also clarifies that distinctiveness need not be inherent but can be achieved through use.

5 www.sec.gov. "Study on ticker symbol" by James J. Angel & Nancy M. Morris

Since, the trade mark associate the product with the manufacturer, generally there is only one person or authority behind the creation of the trade mark. Moreover, the trade mark is treated as the private property of the manufacturer. It may be company or an individual; it is they who have the exclusive right over the mark. The property in the mark is the good will attached to it, which is often at the risk of deception.

Trade marks help the evolution of economy and society; they also help to create a better system for selling services and products. The name one select as a trade mark represent his products' quality and the company's goodwill. A well-chosen and well-publicised trade mark often has value far beyond the physical assets of a company. Thus, the trade marks play an important role for the commercialisation and growth of the industry.

In general, it is economically efficient for the society to protect trade marks because it reduces consumer search costs. Consumers come to know that a trade mark indicates a particular producer or product with which they associate a particular level of quality. Consumers can spend less time investigating the source or quality of a particular product, and producers can spend less time communicating the source or quality of a particular product. This creates a socially beneficial efficiency.⁶

3. Stock Ticker Symbols

3.1 The History and Meaning

The history of the stock ticker⁷ and ticker symbols begins with the ticker tape machine invented by Thomas Edison. The original need for symbols no longer exists, but stock tickers are still alive today.⁸ Stock tickers are unique for each company, regardless of the stock market or exchange on which they trade. It is used to uniquely identify publicly traded shares of a corporation on a particular stock market. It may consist of letters, numbers or a combination of both, representing a particular security listed⁹ on a particular stock market or otherwise traded publicly. Ticker symbol refers to the symbols that were printed on the ticker tape of a ticker tape machine. Company stocks are listed on the exchange to facilitate share/stock trades which is identified by their unique ticker symbol.

When a company issues securities to the public marketplace, it selects an available ticker symbol for its securities which investors use to place trade orders. Every listed security has a unique ticker symbol, facilitating the vast array of trade orders that flow through the financial markets everyday. For example, "KO" is the ticker symbol used by the Coca Cola Company; "MSFT" is the ticker symbol of Microsoft, "GE" is of General Electric, "IBM" is of International Business

⁶ www.sec.gov. "Study on ticker symbol" by James J. Angel & Nancy M. Morris

⁷ A "tick" is an up and down movement in the sale price of a security.

⁸ The original stock ticker tape machines translated the information transmitted over telegraph wires onto tapes that could be read by investors. In order to save bandwidth, company names were assigned one and two letter stock tickers or symbols. The most actively traded companies were assigned a single letter stock symbol.

⁹ Listing means admission of securities to dealings on a recognised stock exchange. The securities may be of any public limited company, Central or State Government, quasi governmental and other financial institutions/corporations, municipalities, etc.

The objectives of listing are mainly to:

- provide liquidity to securities;
- mobilise savings for economic development;
- protect interest of investors by ensuring full disclosures.

See "Guidelines for listing" on <http://www.bseindia.com/about/abintrobse/listsec.asp>, as on 7th October, 2009

Machines and "INTC" is of Intel. It gives the investor the information of where a stock trades and an insight to the company's performance.

Different stock exchanges follow their own style in ticker symbol. In some stock exchange, two letter ticker symbols exist whereas in some other three or four ticker symbols exist. It is possible to identify the exchange in which the share of a company is listed looking into the number of letters used as ticker symbol. For example, one or two letter stock symbol is issued by NYSE.¹⁰ Three letter ticker symbols are issued either by NYSE or by AMEX.¹¹ If the stock symbol is greater than three letters, then the company trades on the NASDAQ stokes.¹² Symbols with five letters ending in X are used for mutual funds. Many Asian countries use numerical or alphanumeric ticker symbols instead of characters to facilitate international trade. For example, 0005 is the ticker symbol of HSBC (Hong Kong); D05 is of DBS Bank (Singapore); 6502 is of Toshiba Corp. (Japan) and 601998 is of China CITIC Bank Corp. Ltd. (Shanghai - China)

3.2 Role of Ticker Symbols in Stock Market

A Ticker symbol is a stock's unique identifier for example, Ford motor company has a ticker symbol of "F". When trading stocks or looking up on quotes, a ticker symbol is used to obtain the information on the company.

Ticker symbols offer quite a bit of information to investors who know what to look for when they see a ticker. In addition to identifying a company, a ticker may indicate the exchange on which a company is traded or if a company is currently undergoing bankruptcy proceedings. This symbol is

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chosen by the company when it begins to issue shares for public trading, and is used to track stock activity and place buy or sell orders by investors. These brief symbols are necessary to streamline the vast amount of activity information that flows through stock exchanges on every business day. Without the stock market ticker symbols, confusion and turpitude would govern the stock market.

A stock symbol, assigned to a listed company is the means of identifying that company's securities, so that the member firms will be able to place buy and sell orders for the company's stock and for the dissemination of pricing information regarding such securities transactions to the investment community¹³ and thus, to decide on where to invest.

4. Ticker Symbols and Trade Marks

Ticker Symbols are not trade marks but have all the salient features of brand name. The ticker symbol is a unique proprietary asset. It is a financial trade mark. It stands as assurance to investors that buying a particular share will deliver a genuine share of a company's stock.

When a company applies to be listed on a particular exchange, it can apply for particular tickers, provided that the ticker is freely available. It is always not necessary that the companies should

10 NYSE - New York Stock Exchange. It is because the NYSE is the oldest stock exchange in America and one two letter ticker symbols were the first to be assigned to the Companies.

11 American Express

12 "NASDAQ" originally stood for "National Association of Securities Dealers Automated Quotations" is an American stock exchange

13 See *Exxon Corp. v. XOIL Energy Resources, Inc.* 552 F. Supp. 1008, 1015 (S.D.N.Y. 1981)

select a ticker symbol for them, since the exchange can assign any symbol randomly. But, the companies in most of the cases suggest a ticker which closely resembles to their brand name. Since the brand names are common/well known among the public, they can easily identify the stocks when they enter into the stock market. If the brands are famous and reputed the associated ticker will also help the company to attract more investors in the share market. In most of the cases ticker symbols are abbreviations of company's name as seen in the examples given above. Some companies use their well-known product or brand name as their ticker symbol. For example, South West Airlines use LUV which is one of their famous brand names as their Ticker symbol and BUD is the ticker symbol of Anheuser-Busch, the brewers of Budweiser beer which symbolizes its premier product.

A company's brand name is its greatest valuable asset. The reputation of the company will closely connect to how famous its brand name/trade mark is. The greater the value of its brand names the more value can its share can acquire in the market. The share market performance of a company is closely related to its brand performance in the product market.

4.1 The difference and Relationship - Trade Mark and Ticker Symbol

In strict sense, the ticker symbols have no connection with trade mark both operate in entirely different context. While, trade marks are used to avoid confusion to the general public as to the source of particular goods or services, ticker symbols are used to avoid confusion amongst the investors. If a symbol is assigned to a Company by a stock exchange, no other stock exchange can assign the same symbol to any other company. In that sense, there cannot exist more than one similar ticker symbols for different companies. Similarly, in the case of trade mark, a mark

The ticker symbol is an international practice, whereas, trade mark protection is national in nature

is conflicting or similar to the existing mark is prohibited from registration by a third party. The ticker symbol is an international practice, whereas, trade mark protection is national in nature. A unique trade mark gives the consumer relevant information regarding the source of the goods and services. In a similar way, a unique ticker symbol will help investors to find relevant information about a particular company.

In trade mark, mark can be registered as a proposed to be used trade mark with a condition that the mark should be actually used within a fixed time period. Similarly, issuers are also able to reserve a symbol that they are planning to use in the near future. If a trade mark is not renewed on time, there is a six months grace period available to renew the same without any fine and another six months to renew the trade mark with fine. If a ticker symbol is abandoned, there is a six-month waiting period before it can be reassigned. In the case of trade marks all these rights vest with the trade mark Registry of each country, but in the case of ticker symbol the rights are vest with the issuer.

Trade marks were widely understood as primarily serving a source identification function. However, today, instead of monitoring a trade mark as a source of information about a product, a trade mark itself is observed as a product. A stock symbol is used in a non-trade mark manner that does not conflict with trade mark rights. However, companies invest substantial time, money and creative effort in developing an association in the mind of investors between the particular symbols under which they offer their

securities/products, which thus entails to the protection of ticker symbol also. The investors look at the ticker symbol to trade in shares of the company. Its sole use is alleged to be with investors in the context of investing. In this, ticker symbol helps to build substantial significant investor recognition, trust, loyalty and goodwill. In trade mark, if the confusion is among the customer, in ticker symbols the confusion is among the investors. If trade mark differentiates one good from the other, ticker symbols differentiate one company from the other.

The economic issues involved in ticker symbol are very similar to those involved with trade marks. The Courts have traditionally not permitted firms to trade mark their ticker symbols as such.¹⁴ The same economic considerations that led society to create trade mark protection can be applied to the case of who should have the right to a particular letter combination for use as a ticker symbol.

The question to be considered is whether use of a company's ticker by somebody as his trade mark can be permitted? Will it create any confusion to the general public? One view is that, since ticker symbols and trade marks are meant for entirely different classes of people there is no likelihood of confusion which is the most important condition for refusal of a trade mark. Another view is that, the consumers of the stocks as well as the goods may coincide in some or other way and in such a situation there is a chance that they will be confused or deceived by seeing similar ticker symbol and trade mark. The issue is to be addressed keeping in view of the object of trade mark law. The purpose of trade mark is to advertise the goods/services of a company and to help the consumers to differentiate goods/services from one company to other.

5. Conclusion

It is a general principle that a stock ticker symbol *per se*, does not function as a trade or service mark for that company's products. Therefore, if a company uses some letter only as its ticker symbol, others are free to use it as their trade mark, since the letters are not its main name or brand and he does not have a trade mark right over that letters. However, if the company apply this string of characters to its goods or services in such a way as to function as a distinctive indicator of the source or origin of those goods and services, then no one else can use the letter as his trade mark. These letters are likely to come to the attention of those who use ticker owner's services or are aware of ticker owner's symbol. If a company's ticker symbol is an abbreviation of its famous brand name, then a third party using/registering it as his trade mark will be confusingly similar to the first company and hence is prevented from doing so.

The trade mark law, as it exist, is not designed to address the issue of confusion between ticker symbol and trade mark. The philosophy of trade marks and its infringement is different from that of Ticker Symbols. It is only when two trade marks are in conflict, the question of infringement arise. That is, the mark in issue should be identical or confusingly similar to a "trade mark or service mark" in which the ticker symbol owner have right; whereas, it is a ticker symbol and a trade mark are in conflict. The question of a proper legislation to protect ticker symbols and its infringement occur here or provision should be made in the trade mark law to address the issues relating to the conflict between ticker symbols and trade marks.

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¹⁴ The NYSE comment letter cites *Exxon Corp. v. XOIL Energy Resources, Inc.*, 552 F. Supp. 1008, 1015 (S.D.N.Y. 1981) and *Central Parking Corp. v. Park One Inc.* No. Civ. A. 97-2638, 1997 WL 655925