



Application Of Trademark Law In Jammu And Kashmir: A Case Study Of Handicrafts And Handloom Sector

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Abstract

Trademark protection works best in growth-oriented cultures where customers may make deliberate choices. A trademark is a symbol of a product's identity in the marketplace, encapsulating all of its distinguishing features. The social value of a trademark is directly connected to its economic value. Handicraft and Handloom sector is one of the major contributors in the GDP of India and same holds true in case of Union Territory of Jammu and Kashmir. A great number of workers are involved in Handicraft and Handloom sector in Jammu and Kashmir. It is a major source of livelihood to these workers. A wide range of products are produced by these people which represent the rich cultural heritage of the UT. These products are globally popular and have a great value in the global and local markets. Trademark although not widely used by these producers can act as a source of protection to the reputation of these products and it can also serve as a guarantor of their origin and quality. Once a product acquires goodwill in the market and the product is traded under a registered trademark, it will be a driving force for more demand and therefore more production, as the product with trademark depicts its authenticity and good quality. More production means more contribution to GDP which in turn means rise in the income of those associated with it. The people who are directly connected to this sector know very little about the trademark and have its registration. In India Trade Marks Act, 1999 presents a

legal basis for governing and dealing with the mechanism of trademark registration and trademark protection.

Key words: Trademark, Handicraft, Handloom, Kashmir, Craftsman, Registration

1. Introduction

The term “Intellectual property” refers to a loose cluster of legal doctrines that regulates the use of different sorts of ideas and insignia. Intellectual property denotes the rights over a tangible object of the person whose mental efforts creates it. There is no intellectual property in mere ideas. Only the particular expression of an idea is protected. Intellectual property provides rights of ownership in the product created by human intellect but not in the product itself. The most common forms of intellectual property are Patents, Copyright, Trade marks and Trade secrets, apart from other forms of protection.⁴

Patents give the holder an exclusive right to use and licence use of an invention for a certain period, typically 20 years.

Copyrights give the holder some exclusive rights to control some reproduction of works of authorship, such as book and music, for a certain period of time.

Trade secrets, where a company keeps its information as secret. This is possible by enforcing a contract under which those given access to the information are not permitted to disclose it to others.

Trademark may be the form of a product, its packaging, or its color combination if they are capable of identifying a product or service belonging to one person from that of another.⁵ It is used to differentiate and identify the products and services of a specific company or business in the course of commerce. Images, characters, numbers, forms, and colours may all be used as trademarks. A product’s origin is indicated by the use of a mark, which allows it to be distinguished from identical or similar items made by rivals.

The economic worth of genuine Handicraft and Handloom items may be increased by registering and utilizing a trademark. The exclusive right to prohibit others from using a mark that is identical or similar to theirs is granted to the trademark owner upon registration. It also shields owner from other people’s deceiving markings.

2. Legal Protection of Trademarks

Mark includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof;⁶

Trade Mark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours;

Trade mark refers to a mark that may be represented graphically and is capable of differentiating the products or services of one person from those of others and may include the form of items, their packaging and the combination of colours. A “mark” may be an object such as a logo or a symbol such as a tag or a label, a word, letter or numerals, or the form of a product, packaging, or the combination of colours. It’s impossible to include all possible combinations of marks in this definition, which is why it’s incomplete.⁷

When goods are presented for sale in the market, a trade mark is a symbol applied or attached that distinguishes the products from similar ones and identifies them with a specific trader or his successor as the owner of an individual company, as having been made, worked on, imported or selected and certified or sold by him or them, or that has been properly registered under the Act as the trade mark of a specific trader.⁸ There are many different types of symbols that may be used to identify the ‘goods’ of an individual retailer.

As a result of priority in adoption, long continuous use, and exclusive rights, a party has the exclusive right to protect its mark, and any subsequent user of the confusingly similar mark or trade mark violates the rights of the earlier user of the mark because his obvious motive is to trade and cash in on the goodwill and reputation of the earlier user of the mark. There is no such thing as overnight success in the world of fame or goodwill. It is a result of years of hard work and a lot of money spent on advertising.⁹

3. Registration of Trademark

The registration process in India is handled by the Office of the Controller General of Patents, Trade Marks, Industrial Designs and Geographical Indications. Branches for these offices are available in Mumbai, Kolkata, Ahmedabad, Delhi and Chennai. The application must be filled as per territorial jurisdiction.

According to the scheme of the Act, any person claiming to be the proprietor of a trade mark used or proposed to be used by him, who is desirous of registering it, shall apply in writing to the Registrar in the prescribed manner for the registration of his trade mark.¹⁰

To register a trademark in India the following steps must be followed:-

- **Select a trademark agent in India:** Proprietors are only allowed to file a trademark application if their place of business is in India. If this is not the case, the right holder must file a trademark application through an agent or attorney. The agent or attorney

usually takes care of the trivialities such as searching, preparing, filing and prosecution of the trademark.

- **Determination of the eligibility and availability of the trademark:** The agent usually starts the registration process by determining whether the trademark is eligible for registration and conducting a clearance search to see if there is a similar mark in the office of the Controller General.
- **Completing the application form and filing:** If the trademark agent has the power of attorney from the right holder he can complete and file the application form. The form will require details such as name and address of the proprietor, a description of the goods and services associated with the mark, whether the mark is in use and a copy of the mark.
- **Review by the trademark office:** The trademark office reviews the application to see if it is complete and then allots the application a number. If the trademark is registered, this number becomes the registration number.
- **Preliminary approval and publication, show cause hearing or rejection of the application:** The trademark association determines if the application is barred from registration either on absolute or relative grounds for refusal as prescribed in the Trade Marks Act, 1999.
- After the examiner has scrutinized the mark up for registration he may object to its registration. In this case, the status of the application will show “**Objected**”.
- Absolute grounds for refusal of trade mark are laid down in The Trade Marks Act, 1999. A mark may be rejected if it is¹¹:
 1. descriptive,
 2. generic,
 3. deceptive of origin of goods or services,
 4. deceptive about the nature of the goods or services,
 5. deceptive about the quality of the goods or services

To counter this objection the applicant has to prove that the mark of the applicant can be easily distinguished by the consumer pertaining to the goods or services provided.

- The Act also provides for relative grounds for refusal. If the examiner objects under this section it will be due to the mark having similarities with an already registered trademark. In this case, the examiner will attach the conflicting parts of the mark as well as the trademarks that it is conflicting with. At this point, the applicant has to overcome the objections placed by the examiner. This has to be done according to the section under which the objection has been raised.¹²

Here the applicant can contest that the mark is different from the conflicting mark. In this case, he must prove that his mark is distinctively different from the conflicting mark and can definitely be distinguished as two separate marks; or get a no objection affidavit from the owner of the conflicting registered mark.

After this, they issue an examination report within a period of one month. The applicant has to reply to the examination report within one month. Depending on the examination report the registrar of the trademark determines whether the application must be accepted, rejected or put up for show cause. During a 'show cause hearing' subject to the facts an application might be rejected, accepted or accepted with certain limitations. If the application is rejected, the applicant can appeal at the Intellectual Property Appellate Board within 3 months of issue of rejection order from the registrar.

Whereas, if the application for registration has been accepted by the registrar after examining the report issued by the examiner then the mark will be published in the official gazette and the Trademark Journal.¹³

Upon publishing it in the Journal, it will be open for the public or third parties to object to the registration of the trademark within 4 months. If there are no objections then the trademark will be registered and the applicant will be given the registration certificate¹⁴ and he will be protected for 10 years from the date of application.¹⁵

However, if the application for registration of trademark has been opposed by the public or any third party during the period of 4 months then begins the opposition proceedings.

An opposition proceeding is dealt under Section 21 of The Trade Marks Act, 1999 and is supplemented by The Trade Marks Rules, 2017 under Rule 42-50.

4. Role of Trade marks in Promotion of Handicrafts and Handloom sector

From the perspective of IPR, handicrafts and handlooms have three distinct components:

- Know how to produce these things.
- External appearance including their form and design.
- Reputation attributed to their style, origin, or quality of work.

It is possible to protect each component with a distinct form of intellectual property. Patents and trade secrets may protect the know-how, while copyright and industrial design can safeguard the outward appearance, while trademarks, collective marks, certification marks, geographical indications, and unfair competition laws can safeguard the reputation of the product.

5. Collective marks and Certification marks

Collective mark means a trade mark distinguishing the goods or services of members of an association of persons (not being a partnership within the meaning of the Indian Partnership Act, 1932) (9 of 1932) which is the proprietor of the mark from those of others;¹⁶

A separate chapter under The Trade Marks Act, 1999 deals with the collective marks. A collective mark shall not be registered if it is likely to deceive or cause confusion on the part of public in particular if it is likely to be taken to be something other than a collective mark, and in such case the Registrar may require that a mark in respect of which application is made for registration comprise some indication that it is a collective mark.¹⁷

Certain features of the items or services promoted under a collective or certification mark may be communicated to the general public via the use of such a mark. The products and services of members of an organisation, which is the mark's owner, are distinguished from those of other businesses by a collective mark. The mark may be used by any member of the organisation without certification.

Products or services with a certification mark are guaranteed to meet particular criteria or qualities, such as a product's location of origin, the materials used in its construction or its manufacturing process, and its quality. For indigenous groups, registering their collective and certification marks may help them identify their craft from others and promote the artists, who create it. It has the potential to boost their financial situation and provide an equal return.

The use of collective and certification marks may also help to improve customer confidence in the authenticity of the products they buy. Consumers are more likely to purchase these things since they may be confident in the product's authenticity and uniqueness.

6. Relevance of Trademark in Handicrafts and Handloom Sector of Jammu and Kashmir

Craftsmanship is man's earliest technological innovation. To be really creative, one must use both his intellect and his hands at once. As well as being visually beautiful, a great product is meant to be functional as well.

Talented artists in poverty know it is neither feasible nor desirable to conserve every element of the past. They remind out that no traditional craft skill can survive unless it has a sustainable market, with the exception of a museum setting.

From the dawn of civilization, handicrafts have been an important cultural feature. Craftsmanship reveals a society's cultural pattern via the quality of its products. The word "handicrafts" refers to any object that is made by hand using indigenous technologies from a certain culture. A society's handicrafts are often its primary source of income. It meets their

basic needs and gives others in the community a way to earn a living. Hence, handicrafts play a significant part in a society's socioeconomic growth.

Lakes, meadows, and an abundance of flowers and birds grace Kashmir's valley. Kashmir is a haven for nature lovers. As a gem in the Himalayas, Kashmir is surrounded by a landscape of flat terrain, high mountains, crystal clear streams, pine forests and the shady Chinar groves of Kashmir. It is a constant source of inspiration for the region's craftspeople.

Today's craft is at a crossroads, putting its practitioners in a precarious position. Because of industrialization, handcrafted items have been pushed out of business since the middle of the 19th century. As a result, the craftspeople who make these items are losing out on money that should be theirs since they are being exported or duplicated without permission from them. As a result, the market for craftspeople has dramatically shifted, but their level of life has not.

The traditional handcraft sector in Kashmir, involving jobs and highly developed skills, has long been threatened by cheap imitations created outside the region. This has been a frequent complaint of Kashmiri artisans. There is a need for a method to protect Kashmir's unique cultural legacy, which is recognised both in India and throughout the world, from being destroyed. In light of this, the Prasad Committee advised that steps be made to "promote handcraft exports with Kashmir as a brand name including the option of seeking Trademark urging exporters to comply to quality standards".

The economy of Jammu and Kashmir relies heavily on Kashmiri handicrafts. Official statistics show that the Jammu and Kashmir exports handicrafts worth over Rs. 1700 crores yearly and employs over 4 million people directly. Protection under the Trade Marks Act is a sound business decision.

Notable examples of Kashmiri art include shawls made of wool; Papier-Machie items; metal commodities; Namdha, Gabba; Chain Stitch and Crewel Embroidery; Khatambandh; Hand-knotted Carpets; and Sozni Embroidery Crafts.

Jammu and Kashmir's economy relies heavily on handicrafts and handlooms, one of the region's oldest industries. This region's socioeconomic structure relies heavily on these industries. In Jammu and Kashmir, the handloom industry employs more than 40,000 weavers and auxiliary employees. Rural and semi-rural economies are heavily dependent on the handloom industry, making it a major source of employment.

Table 1: J&K GDP with Exports from Handloom Sector of last 6 years

YEAR	RUPEES IN CRORES
2014-2015	240
2015-2016	242

2016-2017	235
2017-2018	210
2018-2019	200
2019-2020	NA

Source: <http://ecostatjk.nic.in>

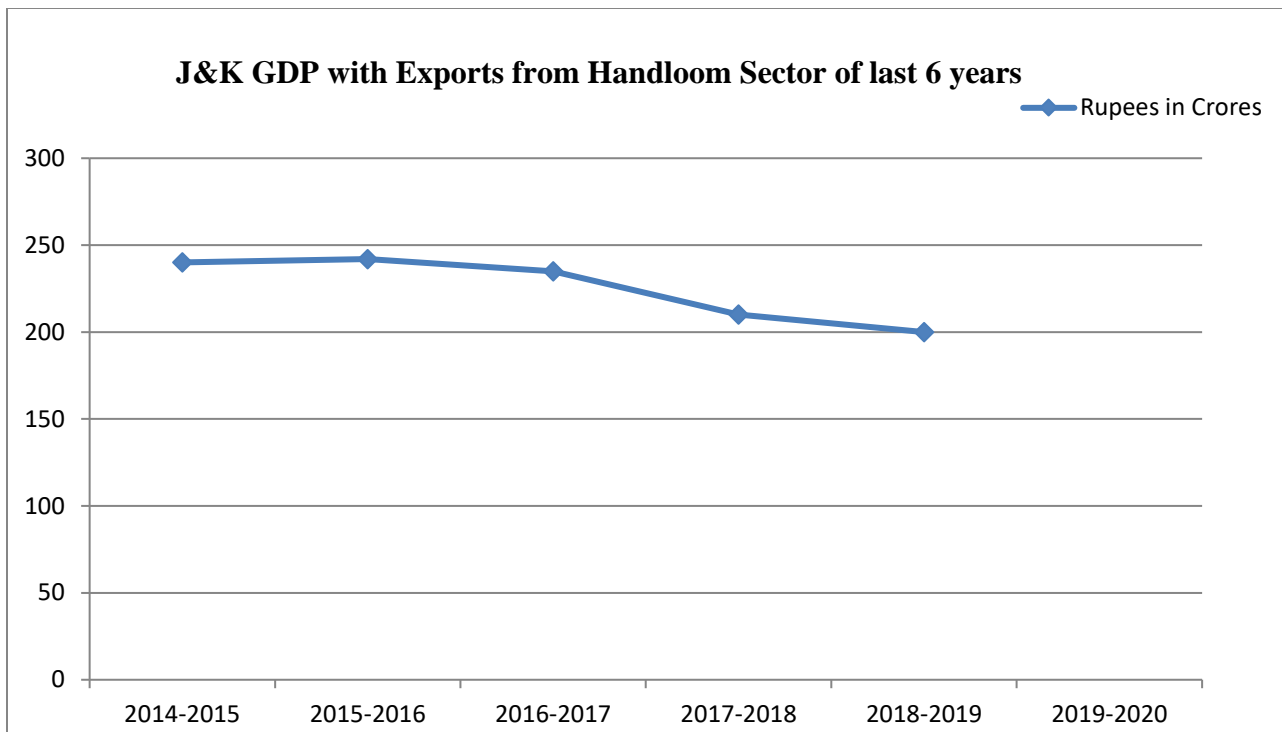
Table 2: J&K GDP with exports from Handicraft Sector of last 6 years

YEAR	RUPEES IN CRORES
2014-2015	1287
2015-2016	1059
2016-2017	1151
2017-2018	1090.12
2018-2019	917.66
2019-2020	935.25

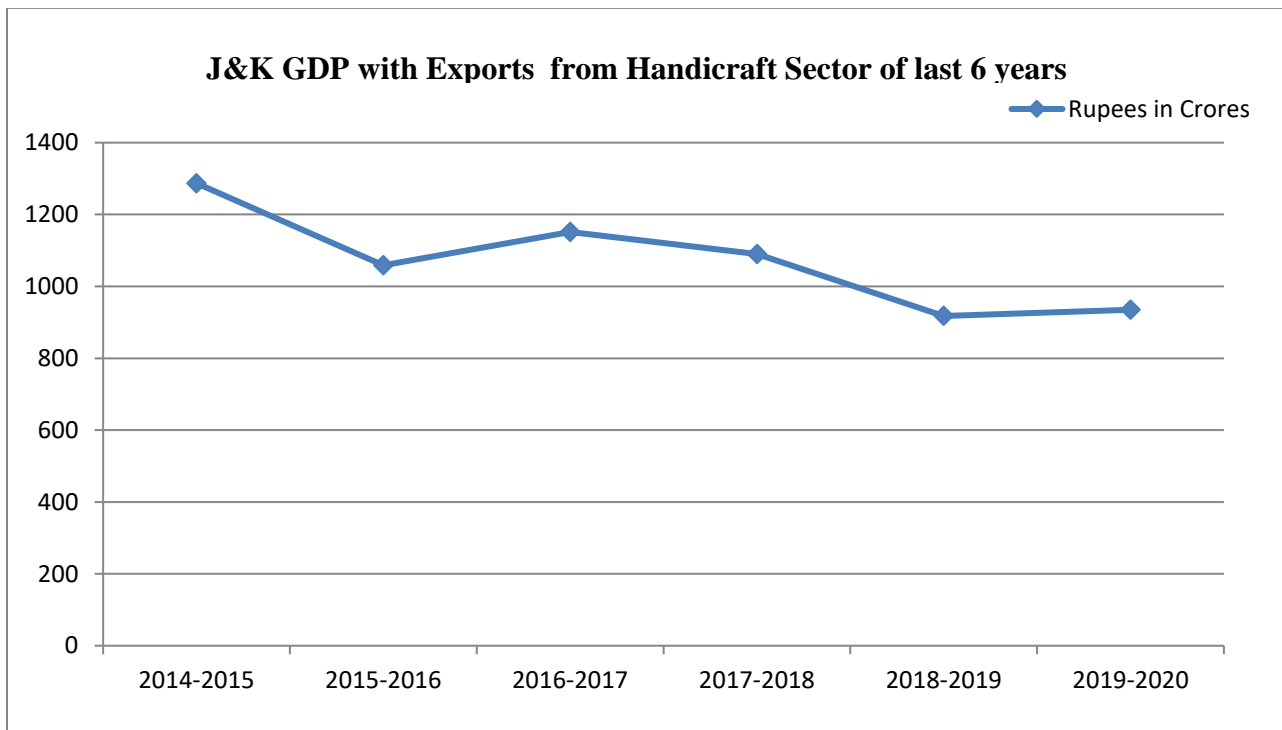
Source: <http://ecostatjk.nic.in>

A large part of India's economy comes from its handicraft and handloom industries, which holds true for Jammu and Kashmir as well. In Jammu and Kashmir, a large number of people are associated with the Handicraft and Handloom business. For many of them, it is the only source of income. These individuals manufacture a vast variety of goods, and these goods embody the UT's rich cultural history. Being popular in both the global and local markets, these items have a high market value. As a source of protection for their reputation and as an assurance of their origin and quality, trademarks can act as a guarantee.

Graphical representation of Net Exports from Handloom and Handicraft Sector in J&K



2019-2020 data is not available.



As can be inferred from the Graph A and Graph B the exports have constantly declined over last 5-6 years and it is very much important that a mechanism must be devised to ensure the revival of this sector. This sector is back bone of the economy of Union Territory, and hence, demands immediate attention. The Government must come up with a full-fledged plan to

ensure its revival and growth. In these hard times using a trademark is a great way to promote these products and give customers an idea of what they can expect from them. It lets businesses to use and distribute any product they want. Hand made products are preferred over machine made products and once the consumer is assured about its originality by way of trademark, it surely will act as a kick start for its revival.

7. Conclusion

Lack of knowledge regarding Trademark registration process in the nation is the most pressing. Despite the fact that trademark registration in India is a relatively simple process, and that progress has been made in this area over the last decade, it is critical to remember that trademark registration alone will not achieve the goals of the Act unless it is accompanied by strong enforcement mechanisms on the domestic and international fronts. As a result, craftspeople and those who specialize in Handicrafts and Handloom are struggling. For example, an isolated hamlet in the Budgam District of Kashmir was historically noted for its Kani Shawls, which were made from the wool of a mountain goat. As a result of the current state of the textile industry's economy, long-time shawl weavers are now looking for other employment opportunities. Will Trademarks help bring back the thousands of weavers who have given up the weaving as their livelihood was damaged by the economic downturn?

Nowadays, the use of trademarks and brand names is a sign of quality. People value a product's trademark because it gives them confidence in its quality. In this sense, the safety of a trademark indicates the security of a product's quality. Trademarks are well-known to the general public due to the prevalence of them on almost everything sold. The purpose of these trademarks is to offer the consumer an idea of the quality or manufacturing process of the items they want to purchase. Buyers are assured of the quality and manufacture of things they are purchasing, even when the specific quality cannot be seen by the naked eye. The quality assurance provided by a trademark is a source of pride for well-known retailers.

As a result of several requirements in trademark law, a trademark serves as a guarantee of the product's quality. The Trade Marks Act, 1999, has several regulations that require the producer to provide high-quality items.