



## Overzealous protection of trademark through bullying: A comparative analysis of India and the United States

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### **Abstract**

*In the new global economy, trademarks have become one of the most crucial tools for companies to protect their brands and intellectual property. Trademark laws were enacted to grant businesses exclusive rights over their marks, ensuring that their brand identity remains safeguarded against infringement. However, the overzealous enforcement of trademark rights by large corporations has led to an alarming trend—trademark bullying. This phenomenon occurs when powerful entities aggressively pursue legal action against smaller businesses, often with questionable claims of infringement, leading to undue financial and legal burdens on these small enterprises.*

*In both India and the United States, trademark bullying has emerged as a significant challenge, with corporate giants using their vast resources to intimidate small businesses through expensive litigation. Many small businesses, lacking the financial means to engage in prolonged legal battles, are often forced to surrender their rights or rebrand entirely, even when they have a legitimate claim to their trademarks. This creates an unfair trade advantage for larger corporations, allowing them to stifle competition and monopolize market spaces under the guise of intellectual property protection.*

*This comparative study aims to examine the extent of trademark bullying in both India and the United States, analyzing legal frameworks, notable case studies, and the impact of such aggressive trademark enforcement on small businesses. By shedding light on these unfair practices, this study seeks to highlight the need for balanced trademark laws that protect legitimate trademark owners without enabling predatory litigation tactics. Addressing this issue is essential for fostering a fair business environment where both large and small enterprises can coexist without undue legal and financial constraints.*

**Keywords:** *Trademark bullying, Over-protection, Unfair trade advantage, Threats, Trademark Infringement, India, United States of America.*

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## I. Introduction

A trademark refers to the legal protection granted to a distinctive mark that may consist of a word, a combination of words, phrases, or symbols, which serves to identify and distinguish the goods or services of one business from those of others. This mark acquires substantial value in the eyes of consumers, functioning as a source identifier associated with a particular brand within a specified category of goods or services.

A common misconception arises when a trademark proprietor believes they possess exclusive ownership over a specific word or phrase in all contexts. Consequently, they may attempt to prevent others from using the same or a deceptively similar mark, even in unrelated fields. However, trademark rights are confined to the specific goods or services for which the mark is registered. These rights do not automatically extend to non-competing or unrelated goods and services. It is in this context that trademark bullying often emerges—where large corporations assert their trademark rights beyond their lawful scope to intimidate or pressure smaller businesses.

According to the United States Patent and Trademark Office (USPTO), trademark bullying is defined as “*the act where trademark owners use their trademark rights to intimidate and harass other business owners beyond what the law might reasonably be interpreted to allow.*”<sup>3</sup> A trademark bully is an entity that aggressively enforces its trademark rights against other entities using allegedly similar marks, even when there is no reasonable likelihood of consumer confusion, particularly in connection with non-competing goods or services. However, policing the possibility of trademark infringements/ passing off or aggressive enforcement of own trademark rights does not amount to trademark bullying.<sup>4</sup>

Trademark bullying classically is when a trademark owner overreaches trying to be vigilant and engages in excessive policing of marks even though there might be little chance of trademark dilution or likelihood of confusion<sup>5</sup>. The second type of trademark bullying is by way of extortion by the trademark owner through cease-and-desist notices and offering a license in return without any meaning commercial use of own mark.<sup>6</sup> A third type of

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<sup>3</sup> Report To Congress “Trademark Litigation Tactics and Federal Government Services to Protect Trademarks and Prevent Counterfeiting”, USPTO (April 2011), <https://www.uspto.gov/sites/default/files/trademarks/notices/TrademarkLitigationStudy.pdf> .

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

<sup>5</sup> Peter S. Sloane, Trademark bullying: legitimate problem or passing fad?, 3 WTR 59, 60 (April/May 2013), <https://www.leasonellis.com/wp-content/uploads/2020/08/Bullying-article.pdf>.

<sup>6</sup> *Id.*

trademark bullying also happens when defendant counter sues over a totally unrelated mark's infringement.<sup>7</sup>

While enforcement of trademark rights is legally permissible where there is a genuine likelihood of confusion, such as when a mark is highly similar to that of a well-established brand, this enforcement crosses into bullying when the rights holder attempts to assert control over marks used in unrelated markets merely to derive undue benefit or eliminate potential competition. In such cases, the enforcement action is not based on genuine legal grounds but rather on the strategic use of intimidation.

Historically, many well-established brands have employed aggressive legal tactics to pressure smaller businesses into relinquishing their marks. Typically, the process begins with the issuance of a cease-and-desist notice, threatening legal action unless the smaller business ceases use of the disputed mark. Faced with the high costs and risks of litigation, these smaller entities often choose to settle—either by discontinuing use of the mark or by entering into agreements that favor the larger entity. Many legal scholars have commented that trademark bullying is nothing but the product of a system of aggressive trademark enforcement.<sup>8</sup> Such tactics are often aimed at preserving market dominance rather than preventing genuine consumer confusion. These coercive measures function more as tools of intimidation than legitimate legal enforcement and contribute to an anti-competitive environment that undermines the principles of fair business practice.

After introducing the concept of trademark bullying and its connection, this paper is a comparative study between India and United States showcasing how both jurisdictions deal with aggressive enforcement by trademark owners through range of case studies. The focus of this paper is to discuss whether trademark law can be a shield against overzealous enforcement of rights and how trademark bullying may lead to the possibility of unfair competition in the market. Part II of this paper focusses on Indian Trademark law and jurisprudence on trademark bullying, Part III focuses on United States, Lanham Act and cases of trademark bullying, Part IV highlights the perils of trademark bullying and its implications on businesses as well as market and lastly, Part V concludes with suggestions to curtail or limit the hazards of trademark bullying.

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<sup>7</sup> *MusclePharm v. Swole Sports Nutrition, LLC* (9:12-cv-80296- RNS (SD Fla, March 15, 2012)) (United States).

<sup>8</sup> Connie Davis Nichols & Charley Carroll, *Trouble in Trademark Law: How Applying Different Theories Leaves Door Open for Abuse*, 17 *SMU SCI. & TECH. L. REV.* 1, 5 (2014).

## II. Trademark Protection and the Concept of Trademark Bullying under Indian Law

Under the Trademarks Act, 1999<sup>9</sup> (hereinafter referred to as “the Act”), a trademark is defined as any mark “*capable of being represented graphically and capable of distinguishing the goods or services*”<sup>10</sup> of one person from those of another. Such a mark may consist of a word, symbol, shape, combination of colors, or any combination thereof. The primary objective of a trademark is to facilitate consumer recognition and identification of the source of goods or services in the marketplace.

The legal framework embodied in the Act seeks to protect the distinctive value and identity of a mark from misrepresentation or misuse, beginning from the stage of registration and extending through the entire period of legal protection. In this context, Section 142 of the Act<sup>11</sup> specifically addresses the issue of groundless threats—commonly referred to as trademark bullying. According to this provision, any person aggrieved by unjustified threats, whether through advertisements, circulars, or otherwise, alleging trademark infringement or any proceeding like that, may initiate a suit for injunction to restrain such threats and may also claim damages. Such a suit may be instituted in a court not lower than district court.<sup>12</sup> It is important here to note that the remedy under Section 142 of the Act is limited to registered marks only or those that the person threatening claims to be registered<sup>13</sup>. The threat may lay as a suit for infringement or any other proceeding which may include passing off, cancellation or revocation or opposition proceeding by the person threatening against the alleged infringer.

In *Value Invest Wealth Management (India) v. Mr.B.G.Kishore Kumar*<sup>14</sup>, the dispute centered around the alleged infringement of the registered trademark ‘Value Invest’ and the domain names [www.valueinvest.biz](http://www.valueinvest.biz) and [www.valueinvestonline.com](http://www.valueinvestonline.com). The plaintiff had received a legal notice from the purported registered proprietor alleging trademark infringement. In response, the plaintiff issued a reply; however, the other party failed to initiate any legal proceedings thereafter. Consequently, the Madras High Court held that the plaintiffs were entitled to a permanent injunction, restraining the defendants from interfering with the

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<sup>9</sup> The Trademarks Act, 1999 Act No. 47 of 1999.

<sup>10</sup> *Id.*, § 2 (1) (zb).

<sup>11</sup> *Id.*, § 142.

<sup>12</sup> *Id.*, § 142 (4).

<sup>13</sup> *Id.*, § 142 (1).

<sup>14</sup> *Value Invest Wealth Management (India) v. Mr.B.G.Kishore Kumar*, C.S.No.586 of 2011 (2019) (India).

plaintiffs' use of the trademark and associated domain names. Such cases prove that in the absence of further legal action, legal notices are merely to intimidate or bully the plaintiff under the guise of legal threats, rather than to pursue a bona fide enforcement of trademark rights.

Other cases such legal cases from India include the *Bata India Limited v. Vitaflex Mauch Gmbh*,<sup>15</sup> where the Delhi High Court decreed that defendant is restrained to threaten the plaintiff Bata in any manner stating that the plaintiff is violating any trademark rights of defendant with respect to “*five pressure points/reflex points in the insoles of the shoes*”. This case is interesting on the point that Delhi High Court highlighted that the defendant has not led any evidence to showcase either a patent right or a trademark right over the pressure points or reflex points of shoes. Thus, an injunction against groundless threats can be sought not only for trademark bullying but also for unjustifiable threats under Section 106 of the Patents Act, 1970.<sup>16</sup>

Injunction was also granted by the Delhi High Court in *Sh. Manoj Kumar Maheshwari Trading v. Tips And Toes Cosmetics Pvt. Ltd.*<sup>17</sup>, where proprietors of Bindi company ‘SHILPA’ gave “groundless, misconceived and malicious” threats through legal notice against another Bindi seller “SUPREME SUHAG”. Since the two-word marks in question were entirely different and so are the device marks of ladies on such Bindi packets with no resemblance or proximity, the Court found the actions of proprietor of ‘SHILPA’ Bindi unjustifiable.

Big corporations often engage in unfair trade practices by forcefully coercing smaller businesses to give up on their legitimate entitlements to their marks through legal tools like legal notices for “cease and desist” or initiation of suits, etc. Cases of unjustifiable pressure creation through “cease and desist” notices as in the *Big Basket v. Daily Basket*<sup>18</sup> controversy are classic cases of corporate arm twisting. Big Basket served a cease-and-desist notice Daily Basket, which is a smaller grocery delivery startup based in Coimbatore, Tamil Nadu. Big Basket claim was over Daily Basket’s trademark alleging it of engaging in unfair competition by offering identical goods and services through similar domain names and logos.

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<sup>15</sup> Bata India Limited v. Vitaflex Mauch Gmbh CS(OS) No. 1112/2006 (2015) (India).

<sup>16</sup> The Patents Act, 1970 Act No. 39 Of 1970.

<sup>17</sup> Sh. Manoj Kumar Maheshwari Trading v. Tips And Toes Cosmetics Pvt. Ltd. 2007 PTC 34 121 (India).

<sup>18</sup>Shagun Thind, Phenomenon of Trademark Bullying in India, Vol. 6 Issue 4. Int. J. of Management & Humanities. 30, 37 (2023).

Section 29 (4) of the Trademark Act, 1999 talks about marks with reputation in India which are taken unfair advantage of by identical or similar marks even for dissimilar category of good and services. This provision reflects India’s international obligations under the broader concept of unfair competition under Paris Convention<sup>19</sup> as well as TRIPs Agreement<sup>20</sup> whereby “*Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition*”. As this definition is open-ended and non-exhaustive, it is open for member countries like India to give effect to their international obligations.<sup>21</sup>

In *Big Basket v. Daily Basket* case, some stakeholders have perceived Big Basket’s actions as an attempt to monopolize a generic term such as “basket,” which is commonly used in the context of shopping and groceries, by claiming it as their exclusive trademark. This move has sparked public debate regarding the appropriateness of registering generic or descriptive terms as personal marks, raising concerns over unfair competition and the broader implications for trademark practices within the Indian e-commerce sector.

The case underscores the complexities involved in brand protection within the online grocery delivery sector, particularly highlighting the challenges associated with the use of generic terms in a shared business domain. It also reflects a growing trend wherein large corporations deploy legal mechanisms to assert market dominance over competitors—a practice often termed as *trademark bullying*. This raises critical questions about the permissible extent to which companies may enforce trademark rights, especially when such marks comprise common words or phrases that are inherently descriptive or widely used within the industry.

However, if the registered proprietor or registered user whosoever is threatening the user of mark satisfies the court by initiating prosecution before the court regarding the alleged infringement, then the suit by the person threatened will not be maintainable.<sup>22</sup> The liability under this provision does not extend to any trademark agent or legal practitioner who is representing parties in such suit or proceedings in their professional capacity.<sup>23</sup>

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<sup>19</sup> The Paris Convention for the Protection of Industrial Property, 1883, Art. 10bis.

<sup>20</sup> The Agreement on Trade-Related Aspects of Intellectual Property Rights (‘TRIPS Agreement’), 1993, Art. 39 (1).

<sup>21</sup> Martin Senftleben, et al., Protection Against Unfair Competition Around the Globe, Vol. 19: 2, JIPLP 79 (2024).

<sup>22</sup> *Supra* note 7, § 142 (2).

<sup>23</sup> *Supra* note 7, § 142 (3).

Similarly, the mere existence of a valid defence to the alleged infringement by the plaintiff does not render the cease-and-desist notice issued by the defendant a groundless threat under Section 142 of the Trademarks Act, 1999. The legitimacy of the notice must be assessed considering the defendant's right to initiate bona fide legal proceedings to protect its trademark. This has been elaborated by the Madras High Court in *Lotte India Corporation Ltd v. Cadbury Uk Limited*<sup>24</sup> where the Lottee Confectionery Company Ltd, a South Korean company sued Cadbury, a United Kingdom based company for groundless threat through cease-and-desist notice served by Cadbury. Cadbury contended before the court that it has been using the 'trademark Eclairs with a broken Chocolate' for more than 40 years and it also has been the first in world to use 'Caramilk' in chocolates and 'Cadbury's Diary Milk Eclairs' has been registered from 1974<sup>25</sup>. So, even if the Lottee has a valid defence, that does not make the notice from Cadbury unjustifiable or groundless. Since Cadbury had a legitimate right and interest over the terms 'Caramilk' and 'Eclairs', this could not be termed to be a case of trademark bullying by one company over other. Therefore, the Madras High Court held: *"mere issuance of a notice seeking discontinuance of <https://www.mhc.tn.gov.in/judis/> the user and warning of a statutory suit by a person, who has a semblance of a right over the marks would not amount to a groundless threat or unjustified threat"*<sup>26</sup>.

### **III. Trademark Enforcement v. Abuse: Addressing Trademark Bullying in United States**

In the United States, the Lanham Act<sup>27</sup> defines a trademark as *"any word, name, symbol, device, or any combination thereof"*<sup>28</sup>, used or intended to be used in commerce to identify and distinguish the goods or services of one entity from those of others, and to indicate the source of the goods or services. The Lanham Act provides a comprehensive framework for the registration, protection, and enforcement of trademark rights. Trademark owners are afforded the right to prevent the use or registration of marks that are likely to cause confusion with their own, thereby safeguarding consumer interests and brand identity. The *"likelihood of confusion"* standard is the principal test applied to determine trademark infringement.

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<sup>24</sup> Lotte India Corporation Ltd v. Cadbury Uk Limited, C.S.No.215 of 2009 (2014) (India).

<sup>25</sup> *Id.*, para 8.

<sup>26</sup> *Id.*, para 27.4.

<sup>27</sup> The Lanham Act (15 U.S.C. § 1051 et seq.) 1946.

<sup>28</sup> 15 U.S. Code § 1127.

A seminal case in this regard is *Polaroid Corp. v. Polarad Electronics Corp.*<sup>29</sup>, wherein the Second Circuit articulated an eight-factor test to assess the likelihood of confusion between competing marks. These factors include:

1. The strength of the plaintiff’s mark;
2. The similarity between the marks;
3. The proximity of the goods or services;
4. The likelihood that the plaintiff will bridge the gap;
5. Evidence of actual confusion;
6. The defendant’s good or bad faith in adopting the mark;
7. The quality of the defendant’s goods or services; and
8. The sophistication of the relevant consumer base.

While the Lanham Act serves to protect legitimate trademark rights, its enforcement has at times been misused by powerful entities to suppress smaller competitors i.e. “trademark bullying.” To address such misuse of legal process, the United States also provides recourse through Anti-SLAPP (*Strategic Lawsuit Against Public Participation*) statutes in different States of United States. These laws are designed to protect individuals and entities from lawsuits that are primarily intended to intimidate or silence them in the exercise of their constitutional rights, particularly free speech and participation in public discourse. Anti-SLAPP laws allow defendants to seek early dismissal of meritless lawsuits and to recover attorneys' fees and costs, thus deterring the use of litigation as a tool for suppression rather than for redress.

It is important to note that trademark bullying can harm competition in the market and have chilling effect on the free speech of people seeking to use trademarks for independent competing purposes, criticism, parody or any other purpose permitted under the fair use doctrine.<sup>30</sup> For example, aggressive enforcement by Adidas against different companies for its three-stripe mark can be termed to be bullying. A list of such cases as examples are listed in the chart below:

Name of the Case	Issue	Verdict
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<sup>29</sup> *Polaroid Corp. v. Polarad Electronics Corp.*, 287 F.2d 492 (2d Cir. 1961) (United States).

<sup>30</sup> Jessica M. Kiser, To Bully or Not to Bully: Understanding the Role of Uncertainty in Trademark Enforcement Decisions, 37 COLUM. J.L. & ARTS 211, 211 (2014).

<p>“Adidas Am., Inc. v. Payless Shoesource, Inc.”</p>	<p>Whether Payless Shoesource’s shoes which had two and four stripes is an infringement and dilution of Adidas’s three striped shoes?</p>	<p>The use of two and four stripes on shoes can cause likelihood of confusion and therefore Adidas was awarded more than \$304 million.</p>
<p>“Adidas Am., Inc. v. Abercrombie &amp; Fitch Company.”<sup>31</sup></p>	<p>Whether Abercrombie’s selling of striped casual wears is an infringement of Adidas’s three striped shoes?</p>	
<p>“Adidas Am., Inc. v. Target Corporation”.<sup>32</sup></p>	<p>Whether Target’s selling footwear with two or four stripes amounts to unfair competition, trademark infringement and dilution of Adidas’s three stripe mark?</p>	<p>The Court allowed Adidas’ motion in part.</p>
<p>“Adidas AG v. Tesla Motors, Inc.”<sup>33</sup></p>	<p>Adidas opposed Tesla’s filing of trademark application regarding the three horizontal stylized stripes in Model 3 Vehicle.</p>	<p>Tesla withdrew its application.</p>
<p>“Forever 21, Inc. v. Adidas”<sup>34</sup></p>	<p>Forever 21 petitioned the court for a declaratory judgment, seeking a ruling that its striped apparel does not infringe upon Adidas’s registered three-stripe trademark.</p>	<p>Out of court settled between parties.</p>
<p>“Adidas America Inc Adidas Ag V. Thom Browne Inc.”<sup>35</sup></p>	<p>Whether Thom Browne is selling sportswear and athletic-styled with sportswear with three horizontal parallel bands is deceptively similar to three-stripe mark of Adidas whereby causing unfair</p>	<p>The Court allowed Adidas’ motion in part as to the above claims subject to defence of laches.</p>

<sup>31</sup> Adidas Am., Inc. v. Abercrombie & Fitch Co., No. 3:04-cv-1866-RE (D. Or. Dec. 23, 2004) (United States).

<sup>32</sup> Adidas Am., Inc. v. Target Corp., No. 3:08-cv-01140 (D. Or. Sept. 30, 2008) (United States).

<sup>33</sup> Notice of Opposition, Adidas AG v. Tesla Motors, Inc., No. 91232672 (T.T.A.B. 2017) (United States).

<sup>34</sup> Forever 21, Inc. v. Adidas Am., Inc., No. 2:17-cv01752-GW-SK (C.D. Cal. Mar. 3, 2017) (United States).

<sup>35</sup> Adidas America Inc. Adidas Ag V. Thom Browne Inc. 21-CV-5615 (JSR) (RWL) (2022) (United States).

	competition, trademark infringement and dilution?	
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The U.S. legal system relating to trademarks is based on financially incentivizing trademark owners to enforce their right and assert their claims aggressively. This is based on the reward theory whereby the prevailing notion is that “stronger” trademarks are entitled to broader and more robust legal protection than “weaker” or less distinctive marks, thereby encouraging more litigious behaviour.<sup>36</sup>

While trademark bullying remains a significant concern, particularly in the U.S. where enforcement mechanisms are robust and widely accessible, such countermeasures reflect the ongoing legal efforts to strike a balance between the legitimate protection of intellectual property and the prevention of its misuse as a means of market domination or suppression<sup>37</sup>. Thus, bullies operate on the logic that “*their rights will be more valuable if their objection succeeds*”.

For example, in the case involving Hansen Beverage Company, the manufacturer of the energy drink Monster, the company issued a cease-and-desist notice to Rock Art Brewery, alleging trademark infringement.<sup>38</sup> The dispute arose over Rock Art's use of the mark “Vermonster” for its brewed beer products. Hansen Beverage claimed that the use of “Vermonster” created a likelihood of confusion with its “Monster” energy drink trademark, despite the significant differences in the nature and category of goods - alcoholic beer versus non-alcoholic energy drinks. Moreover, Rock Art Brewery operated primarily in a limited number of U.S. states, which further diminished the plausibility of consumer confusion. This matter was widely criticized as an instance of trademark bullying, where a large corporation employed its legal resources to challenge a small business over a tenuous and arguably overreaching claim of trademark similarity. The case was finally settled out of court between the parties.<sup>39</sup>

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<sup>36</sup> Stacey Dogan, Bullying and Opportunism in Trademark and Right-of-Publicity Law, 96 B.U. L. REV. 1293, 1316–22 (2016).

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

<sup>38</sup> *Supra* Note 15, at 38.

<sup>39</sup> Brewer, Monster-maker settle ‘Vermonster’ dispute, NEW YORK POST (Oct. 22, 2009), <https://nypost.com/2009/10/22/brewer-monster-maker-settle-vermonster-dispute/> .

Other important cases from United States of recent relevance involve the *Apple v. Prepear*<sup>40</sup> case where, Super Healthy Kids, operating under the brand name Prepear, was involved in a trademark dispute with tech giant Apple Inc., centered around the visual appearance of their respective logos. Apple objected to Prepear's logo, asserting that the use of a fruit-shaped design could potentially infringe upon and dilute the distinctiveness of Apple's iconic logo. The tech company argued that Prepear's minimalistic pear-shaped logo could create a likelihood of consumer confusion due to the "blurring" of brand identities, particularly within digital marketplaces. Apple's claim was based on the premise that such logo is "*within Apple's natural zone of expansion for Apple's trademarks.*"<sup>41</sup> Apple contended that allowing similar iconography, even involving a different fruit, might erode the uniqueness and recognizability of its trademarked bitten apple logo.

However, a comparative analysis of the logos reveals several key differences. Prepear's logo features a green outline of a pear, displayed against a white background, with a leaf that points downward. In contrast, Apple's logo consists of a solid, monochromatic image of a bitten apple, with the leaf pointed upward. Beyond visual distinctions, the nature of goods and services offered by the two entities are fundamentally different. Prepear operates in the realm of healthy meal planning and food education for children, while Apple is a global technology company primarily engaged in the design and sale of electronic devices and digital services.

Given the differences in both the logos and the industries in which the companies operate, Apple's enforcement action against Prepear was widely perceived as an overreach. Labeling Apple's actions as merely "overzealous" may understate the situation. The dispute illustrates how companies with vast legal resources can exert undue pressure on small businesses, forcing them into costly legal defenses or settlements, even when the infringement claims are tenuous. In this case, Prepear's experience serves as a clear instance of how trademark law, while designed to protect brand identity, can be misused to stifle competition and innovation when wielded without proportional justification.

From the above understanding of the cases, it may be well argued that this is becoming nothing more than bullying tactics by big companies, and it highlights something known as trademark bullying which happens when massive brands use trademark laws to intimidate

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<sup>40</sup> Apple Inc. v. Super Healthy Kids, Inc. Opposition No. 91254886, USPTO (Apr. 26, 2021), <https://ttabvue.uspto.gov/ttabvue/v?pno=91254886&pty=OPP&eno=14> .

<sup>41</sup>An apple is an apple, a pear is a pear. Don't Compear!, LEXOLOGY (Aug. 18 2020), <https://www.lexology.com/library/detail.aspx?g=425173e9-99a4-4458-a7b9-ceb43a0af637> .

and put fear into smaller rivals who have not necessarily infringed their design but used something similar so at court, the two can be legally distinct. Trademarks are also meant for protecting the consumer from confusion of a brand, not creating monopolies over things like stripes which are just design elements generally.

#### **IV. Toll of Trademark Bullying on Small Enterprises: Challenges and Implications**

Trademark bullying has emerged as a pressing concern for small and emerging enterprises, particularly where large corporations exploit their market dominance and legal resources to aggressively enforce trademark rights. As discussed before, such enforcement often targets small businesses whose trade names, logos, or branding elements bear only minimal or incidental resemblance to registered trademarks. These threats impose severe financial and operational burdens on enterprises, often stifling their growth and innovation.

Beyond monetary costs, trademark bullying significantly hinders market competition and creativity. The looming threat of legal action discourages entrepreneurs from developing unique brand identities or product designs, even when such use may constitute fair or non-infringing use. This results in an imbalanced marketplace where dominant players suppress potential competitors and attempt to monopolize generic or commonly used symbols and terms, contrary to the very objectives of trademark law. The challenges hereby can be summarized as follows:

##### **1. Cease and Desist on pretext of similarity as a tactical weapon:**

Larger corporations frequently employ cease-and-desist notices under the pretext of alleged similarity. These notices, often unsupported by actual legal action, are intended to intimidate smaller businesses into compliance (as discussed in case of *Big Basket v. Daily Basket*). The recipients, lacking the resources to contest these claims, are coerced into modifying or abandoning their branding strategies, thereby conceding the dispute without judicial resolution.

##### **2. Financial Strain and Brand Rebuilding apprehension in defence of mark:**

Legal representation, court fees, and potential settlement costs can be crippling. Moreover, if required to rebrand, these businesses must bear additional costs for redesigning logos, updating marketing materials, and regaining brand recognition. Small businesses, though

possessing valid legal defences, are often pressured into settlement due to the prohibitive cost, time, and emotional toll of litigation. These settlements are not a reflection of legal merit but of economic coercion.

### **3. Attempts for Market Dominance through Aggressive Enforcement by trademark proprietors:**

Certain corporations use trademark enforcement to assert monopolistic control over industry-specific imagery or terms. The notable examples are of *Adidas enforcements*, *Apple Inc. v. Prepear*, etc. despite the clear distinction between the goods and services. This demonstrates how trademark law can be misused to suppress even non-competing entities under the guise of brand protection.

### **4. Chilling Effect on Innovation and Creativity leading to market barrier:**

The fear of litigation acts as a significant deterrent to innovation (e.g. use of the word Eclairs as a part of mark as discussed in *Lottee v. Cadbury*). Small enterprises may avoid using even generic or widely used symbols, fearing retribution from more powerful rights holders. This fear inhibits market entry, product development, and branding innovation, thereby diluting overall market dynamism.

The cumulative effect of such practices is detrimental not only to small businesses but also to consumer welfare and market diversity. Hence, trademark bullying often results in prioritizing dominance over fairness, and in doing so, restricts innovation, competition, and consumer choice.

## **V. Conclusion and Suggestions**

In conclusion, it can be said that trademark bullying is an increasingly pervasive issue in both India and the United States. It typically involves threats that often come in the form of cease-and-desist notices, which, despite lacking legal merit, pressure small businesses to abandon their trademarks or avoid litigation altogether due to its prohibitive costs.

In the United States, the term “trademark bullying” has received formal recognition, particularly through discussions and reports by the USPTO. Cases have emerged where large corporations assert infringement claims even against unrelated or non-competing products, thereby creating a monopolistic environment that stifles innovation and fair competition.

By contrast, Indian trademark law lacks a specific legal definition of “trademark bullying” or “groundless threats.” Section 142 of the Act provides a remedy against *unjustified threats* of infringement proceedings. However, the ambiguity in interpreting what constitutes a “groundless threat” may result in inconsistent application.

Although the scale of trademark bullying in India may not match that of the United States, the underlying patterns are similar. Without a codified definition or clear judicial standards, large corporations in India frequently initiate aggressive action against small businesses primarily to deter competition rather than to protect legitimate trademark rights.

In this context, anti-SLAPP legislation in U.S., could provide a model for reform in India. Incorporating similar safeguards in Indian law would lower financial and procedural barriers for businesses defending against overreaching trademark claims.

Preventive measures also play a crucial role. Small enterprises should conduct thorough due diligence and trademark searches prior to registration. If faced with a notice of infringement, recipients should critically examine the terms of any proposed settlement to ensure they are equitable and not unduly restrictive. Moreover, utilizing social media and public platforms can help garner awareness, rally public support, and highlight the imbalance in legal power, thereby advocating for systemic legal reforms.

In conclusion, tackling trademark bullying requires not only statutory clarity and judicial consistency but also institutional support to ensure that trademark law serves as a shield for innovation and fair competition—not as a sword for commercial dominance.