

INDIA'S FIRST OLFACTORY TRADEMARK: LEGAL BASIS AND IMPLICATIONS OF THE ROSE-SCENTED TYRE MARK

Application No.:	5860303
Trademark:	Floral Fragrance / Smell Reminiscent of Roses as applied to Tyres
Class:	12
Goods:	Tyres for vehicles
Applicant:	Sumitomo Rubber Industries, Ltd., Japan

I. Background and Statutory Challenges

India's first accepted smell trademark "FLORAL FRAGRANCE/ SMELL REMINISCENT OF ROSES AS APPLIED TO TYRES," filed by Sumitomo Rubber Industries, Ltd. represents the first time the Trade Marks Registry ("the Registry") was required to interrogate the capability of an olfactory sign to meet the statutory definition of a trademark under Section 2(1)(zb) of the Trade Marks Act, 1999 ("the Act"). The Registry records the application in Class 12 for tyres, filed on March 23, 2023, and ultimately shows it as "Accepted & Advertised", with an explicit notation that the mark is an "Olfactory smell trademark for tyres that smell of Roses."

When the application was examined, the Registrar identified two fundamental impediments. First, the Examiner questioned whether a scent could meet the requirement of being "represented graphically," given that Indian law still preserves this condition in its statutory form. Second, an objection was raised under Section 9(1)(a) of the Act, expressing doubt as to whether the rose scent possessed inherent distinctiveness in the context of tyres. These objections were not technicalities; they went to the very core of whether Indian trademark law could, in its current form, accommodate an olfactory mark. The proceedings that followed supplied a complete legal, scientific, and comparative framework to answer those concerns.

II. Graphical Representation: Law, Jurisprudence, and Scientific Method

To overcome the Registry's objection regarding graphical representation, the Applicant first returned to the language of the statute and the meaning of "graphically." The attention was drawn upon authoritative dictionaries (such as Merriam-Webster, Collins, and Cambridge) to demonstrate that "graphic" and "graphically" are not confined to visual drawings but extend to written symbols, characters, and clear descriptive language. The Applicant argued that a precise verbal description of a universally identifiable smell, such as that of roses, satisfies the purpose of graphic



representation: it expresses the sign in a form that is clear, comprehensible, and capable of being recorded on the Register.

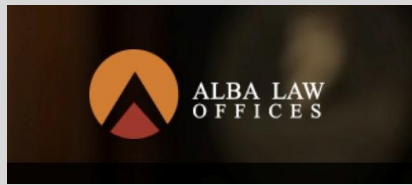
The reliance was extensively placed on the landmark judgment of *Ralf Sieckmann v. Deutsches Patent- und Markenamt*, excerpts of which were included in the record. This decision articulated the standards that have shaped global doctrine on non-visual marks: a trademark's representation must be clear, precise, self-contained, easily accessible, intelligible, durable, and objective. The Applicant applied each Sieckmann criterion to the smell of roses, explaining that the scent is universally understood, consistent across varieties, independent in its olfactory identity, and accessible to the public without technical expertise.

The Applicant also adopted the scientific seven-dimensional olfactory vector diagram, generated using technology from IIIT Allahabad and reproduced the same in the Trademark Application. This diagram plotted the rose smell across seven scent categories i.e., floral, fruity, woody, nutty, pungent, sweet, and minty and is accompanied by a technical explanation describing the volatile organic compounds that give rise to the fragrance of roses. This diagram provided precise, measurable parameters that supplied the objectivity, durability, and clarity demanded by Sieckmann. It anchored the scent in a reproducible scientific format, thereby addressing the Registrar's most significant concern: whether a smell can be represented with the same certainty as traditional visual marks.

Clarity was further brought by placing credence on the foreign registrations that confronted similar questions under comparable legislative frameworks such as:

- Acceptance of the smell of fresh cut grass for tennis balls by the European Union IP Office in Vennootschap Onder Firma Senta Aromatic Marketing v. Markgraaf B.V. dated February 11, 1999
- Registration of a floral scent reminiscent of plumeria blossoms by United States Patents and Trademarks Office ("USPTO") in Re Celia Clarke, DBA Clarke's OSEWEZ
- Registration for the strong smell of bitter beer applied to flights for darts" by United Kingdom in 1994.

Additionally, reference was made to the United Kingdom's 1994 registration for the "floral fragrance / smell reminiscent of roses applied to tyres" obtained by the Applicant. All these registrations / acceptances were granted at a time when graphical representation was a statutory requirement. These precedents were not invoked as binding but as evidence that precise word



descriptions of well-known scents, sometimes supplemented with contextual explanation, have long been accepted internationally as adequate graphic representations.

III. Establishing Distinctiveness: Arbitrary Nature of the scent in relation to Tyres

The Registrar's second objection concerned distinctiveness. The Applicant argued that the smell of roses bears no natural or functional relationship to tyres and is therefore inherently distinctive. The scent does not describe any attribute, quality, performance, or characteristic of the goods; it is not a naturally occurring smell in rubber products; and its infusion is an intentional, arbitrary act designed to serve as a source identifier. The Applicant drew parallels with *Re Celia Clarke*, where the USPTO held that a fragrance artificially applied to goods not normally associated with scent, sewing thread and embroidery yarn, could function as a trademark precisely because the scent was neither descriptive nor functional.

Further reliance was placed on the qualitative attributes of the rose scent, demonstrating that it is clear, intelligible, and universally recognisable, enhancing its capacity to act as a badge of origin when used in an unexpected context. It was emphasised that the public can readily perceive the fragrance, and that the scent, when infused into tyres, is likely to endure long enough to perform the essential trademark function of distinguishing the Applicant's goods. This line of reasoning directly answered the Examiner's concern that the smell might be indistinct, too common, or too fleeting to operate as a trademark.

IV. Legal Significance of the Acceptance

After reviewing the objections, the scientific scent vector, the comparative jurisprudence, and the statutory analysis – the Registrar concluded that the Applicant had satisfied both statutory requirements under Section 2(1)(zb) of the Act: the scent had been graphically represented with sufficient clarity and precision, and the mark possessed inherent distinctiveness by virtue of its arbitrariness in relation to tyres. The Registry Records accurately reflects this conclusion, recording the status of the Application as "Accepted & Advertised" and identifying the trademark as an olfactory smell mark for tyres that smell of roses.

The acceptance of this application is legally significant. It demonstrates that the Indian statute, without amendment, can accommodate non-traditional marks when supported by rigorous evidence. It affirms that graphical representation is not limited to visual illustrations but may encompass precise verbal description and scientific mapping. It also signals that distinctiveness is evaluated in context: a scent can be inherently distinctive when it is entirely unrelated to the goods it marks.



In effect, this proceeding establishes India's first doctrinal pathway for olfactory trademarks. Through a blend of statutory interpretation, comparative jurisprudence, scientific representation, and well-structured legal argument, it sets a foundational precedent for the examination of future non-traditional marks and confirms that Indian trademark law is capable of evolving through reasoned application rather than legislative overhaul.

Order Dated: November 21, 2025 [[Read Here](#)]

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