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A SHORT NOTE ON

THE DRAFT TRADE MARKS (HOLDING INQUIRY AND APPEAL) RULES, 2024

The Ministry of Commerce and Industry, Department for Promotion of Industry and Internal Trade (“**Ministry**”), has rolled out the Draft Trade Marks (Holding Inquiry and Appeal) Rules, 2024 (“**Draft Rules**”) on July 01, 2024. The Ministry is presently inviting objections and suggestions from the public for consideration by the Central Government and post the expiration of thirty days since the publication date, i.e., July 3, 2024, the Draft Rules will be taken into consideration.

Herein below is a brief of the alteration that the Draft Rules aim to make to the Trade Marks Act, 1999 (“**the Act**”) and the Trade Marks Rules, 2017 (“**the TM Rules**”):

- ❖ The Draft Rules aim to simplify an aggrieved party’s ability to seek recourse when an offence under Section 107 of the Act is prima facie made out. Section 107 of the Act covers misrepresentation of a trademark as registered where its registration is falsely applied in non-compliance of the particular details of the trademark, where the punishment includes imprisonment upto three years and/or a fine. This simplification intended through the Draft Rules refers to the introduction of electronic means of lodging complaints against offence committed under Section 107 of the Act which includes electronic service of communication to the parties concerned.
- ❖ Secondly, the Draft Rules aim to introduce Section 112A for the purpose of adjudication of offences committed under Section 107. An adjudicating officer is authorized under Section 112A to address the grievance raised in the electronic complaint against offences committed under Section 107 of the Act. To maintain an efficient system of addressing complaints, the adjudicating authority has to electronically notify the other party to show cause as to why no inquiry should be held against him. The adjudicating officer is also empowered to enforce attendance of a person essential to the successful resolution of the matter and impose a penalty that he deems fit in his judgement, in accordance with the Act. However, the proceedings before the adjudicating officer must be concluded within three months from the notice issued to the opposite party.



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- ❖ To not deprive the opposite party of a fair chance to be heard, the Draft Rules have also introduced Section 112B which reserves the right to electronically raise an appeal against the order of the adjudicating officer within sixty days from the date of the order. The appeal proceedings are equally productive since, in the ordinary course of action, they have to be concluded within sixty days from the date of the receipt of the appeal.

Although the Draft Rules also provide for the provision of extension of time in concluding the matters by the adjudicating officer or the appellate authority till any period as deemed fit, this discretion is subject to a reasonable cause for the delay and the same is to be recorded in writing.

Conclusion

Overall, the legislative intent behind introduction of the Draft Rules is likely to increase transparency and curb possibility of partiality and undue influence. It is pertinent to note that with the addition of Sections 112A and 112B of the Act, the Central Government has effectively strengthened the authority of the Trade Marks Registry to provide apt remedy in cases of false representation of trademarks unlike the previous scenario, where the Courts would ordinarily take over upon complaint recorded in writing by the Registrar or issuance of certificate by the Registrar to the extent that a trademark is being falsely represented. Additionally, this shift in the presiding authority over such offences also mitigates the adverse effect of pendency in Courts to create a functional and accessible system.