



3D, Girdhar Apartment 28, Firozshah Road New Delhi – 110001 | Tel: +91-11-3501 2831 |

Email: delhi@albalawoffices.com | Web: www.albalawoffices.com

“Confusion” and its different meanings under Trade Marks Law

The grounds for refusal are one of the first laws that we learn when we enter the Trade Marks field. While the absolute grounds pertain to Section 9 of the Trade Marks Act, 1999 (“Act”) the relative grounds are detailed under Section 11 of the Act.

Section 9 of the Act pertains to various grounds basis which a mark cannot attain registration. This article will focus on **Section 9 (1) (a) and 9 (2) (a)** which read as:

“9. Absolute grounds for refusal of registration.—

(1) The trade marks—

*(a) which are devoid of any distinctive character, that is to say, **not capable of distinguishing** the goods or services of one person from those of another person;*

and

(2) A mark shall not be registered as a trade mark if—

*(a) it is of such nature as to deceive the public or **cause confusion**;*”

Additionally, a rather simple comparison will be made with **Section 11(1) of the Act**, which reads as:

“11. Relative grounds for refusal of registration.—

*...(1) (b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark, there exists a **likelihood of confusion** on the part of the public, which includes the likelihood of association with the earlier trade mark.”*

As evident, both the provisions include a reference towards confusion in terms of a trademark. Many consider the ‘confusion’ to be between two marks itself. However, had that been the case, there would have been no bifurcation between Absolute and Relative grounds. Precisely why it is of utmost importance that one understands that a different meaning of the term “confusion” denotes in both the provisions.



3D, Girdhar Apartment 28, Firozshah Road New Delhi – 110001 | Tel: +91-11-3501 2831 |

Email: delhi@albalawoffices.com | Web: www.albalawoffices.com

Section 9 speaks only about the mark applied for and not the mark in comparison with another mark. Resemblance and comparison of marks takes place under Section 11. The meaning of the term “confusion” cannot be replaced under both the provisions.

If given an example, a mark “Bee’s Wax” for wax and related goods, would amount to confusion within the public as the mark in itself is not distinctive but descriptive and it may be refused on the ground of deception or confusion under section 9. However, the understanding detailed from the provisions that the question related to resemblance arises under Section 11.

In sum, relying under Section 9 and 11, both together, is by default, contradictory.

Note- This is by way of an individual interpretation of the law.

Written by – Shrutika Misra, Senior Legal Associate at Alba Law Offices.