



Trademarking Tourism: Destination Branding in Indian Tourism Industry

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Tourism is so advanced in India that it may now be considered also as India's backbone. This research specifically highlights a cross disciplinary perspective by establishing the amalgamation between Tourism Industry and Intellectual Property Laws in India. Tourism, both generally and well as legally seems to be constantly viewed in the aspects of 'social, cultural and political' perspectives. However, this research narrows down to the interdisciplinary approach to Tourism and Trademark i.e., with respect to 'Tourism and Destination Branding'.

Destination branding as a concept in itself aims at explaining that each destination has to be 'trademarked' in order to establish distinguishability of each country/state to be exhibited as such. Furthermore, this research legally evaluates the collaboration of Tourism Laws and Trademark Legality in India, in furtherance of which the current legal framework of Tourism in India has been considered along with the Trademark scenario in India, thereby establishing the significance of protecting Destination Branding in India's Tourism Industry.

Destination Branding is popularly highlighted as a status symbol, by the government of various states. However, lacuna persists in the current protection of these destination names and symbols. Destination Branding online and offline includes domain names trademark, image marks and logos of various states. Online platforms in the current research includes social networking sites which involve themselves in advertising these marks. Further, this research has critically evaluated the potential of 'Destination Branding' in India along with its shortcomings and benefits that accompanies the collaboration. Further, it has considered the legal framework of Malaysia, Australia and United States of America for a cross-country perspective, more so, it has compared the possibility of adaptation of various laws into the Indian tourism scenario, checking its feasibility thereby establishing the interlink between Intellectual Property Law and Tourism Industry in India. The objective in this research has primarily covered the study of the lacunas existing in the Indian Tourism Industry with respect to Destination Branding and has analyzed the existing potential of protection of Destination Branding under Trademark Law. The results entail the protection of Destination Branding in the Indian Tourism Industry under the context of Trademark Law.

The research has evaluated the requirement of 'Destination branding', not only on a surface level but also suggests alterations in the legal framework of Tourism Industry via the concept of 'Destination Branding' in India, after having compared the international scenario.

Keywords: Destination Branding, Tourism Industry, Intellectual Property Law, Trademark, Cross-Country Perspective

Tourism and Destination Branding

Tourism often referred to as a sector that is required to fetch revenue, is a boon to the financial aspect of India. However, 'Tourism' as it stands evident, is viewed in a 'socio-cultural' aspect thereby stating that it improves 'cultural exchange', which thereby signifies that there is an aspect of financial gain between people who not only visit the country for the purpose of travelling but also holds a permutational chance of increasing investment/capital in the country. This cultural exchange explains the possibility of social interaction between people of various believes ethnicity and race. In furtherance of the same, 'festivities' is another major tourist attraction which helps in cultural and religious

exchange.¹ Furthermore, it is extremely evident that the 'political' aspect of tourism has existed since time immemorial which states that the leaders of various nations exchange their politico-legal ideas via various conferences and summits. In furtherance of the above said, what binds these aspects of Tourism, here, majorly the aspect of tourism industry is the "Branding" of the nation in question. The economic, political, social or even the cultural gain stands evident only via two important aspects i.e.

- (i) Imagery/Portrayal of a nation
- (ii) Legal scenario/Laws of the nation

The above said pointers stand satisfied when combined and interlinked with each other due to which there is an inherent amalgamation of two leading to the aspect of 'Destination Branding' in Tourism Industry. This concept on a general scale

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signifies that a nation is required to exhibit their unique selling point/USP via various mediums which can include a logo, title, image, mark and the like [which is not exhaustive]. The example of Destination Branding shall be as follows: *Incredible India*², *I Love NY*³, *Malaysia, truly Asia*⁴ and many that follow in subsectors of tourism as well.

Destination branding is relatively new a concept introduced lately not just in the Western terrain but also in the Asian subcontinent. As the name itself suggests, this concept aims at branding the nation with a unique aspect about that particular destination. Further, destination shall not stop just at the level of a nation but can further submerge down to state and its peculiarities as well.

This concept of destination branding is usually considered from a 'marketing perspective', in order to showcase how economically well a nation is progressing due to its marketing and economic strategies, however, this paper goes on to explain the aspect of 'legality' and the aspect of legal norms that back the concept of Destination Branding. Furthermore, this paper explains the stringent legality that stands often neglected when Tourism industry is concerned and that is the relation between Destination Branding and Intellectual Property Law.

Interlink between Destination Branding and Intellectual Property Law

Destination Branding is often viewed as a 'marketing strategy' when compared to that of a 'safeguard measure'. This statement translates to the lack of importance that is given to the aspect of Intellectual Property Protection in the built concept of Destination Branding. The concept of 'area branding/location branding' is what sums upto the term Destination Branding. There is a strong consensus that image is a key part of a marketing strategy for a destination and various researchers (Chon, 1991; Heath and Wall, 1991) have examined the use of image in brand formation for destinations.⁵ However, the importance is often given to the economic scale of value this 'Branding' holds whereas the importance here is with respect to the following aspects:

- (i) Destination Branding summing upto providing Intellectual Property Protection
- (ii) Destination Branding *per se* protection
- (iii) Destination Branding logo protection via Trademarks

The abovementioned aspects are studied with specific reference in India thereby comparing the same to various nations. This concept of Destination Branding is

comparatively a new area/ discipling that has recently begun to persist in India. What started off as a mere 'advertisement provision' of the nation has turned out to be an area of study in itself. This is to explain that India started Destination Branding with the very logo of '*Incredible India*'² with the baseline idea of adding value to its financial sector which was *prima facie* done for the purpose of attracting tourists as such. However, it not only turned into a matter of Intellectual Property but also served the very aspect of identifying lacuna in the protection al scenario of Destination Branding in India.

In order to establish the aspect of interlink between Tourism aspect of Branding Destinations and that of acceptance of the mark as Intellectual Property becomes essential, primarily and that primary link can be traced via the concept of Trademarks. The Intellectual Property Law that is concerned here is *prima facie* that of 'Trademarks which is governed by the Trademarks Act, 1999.⁶ Section 2(1)(m) of the Trademarks Act states as follows

*"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;*⁷

Deriving from the above said definition of a 'mark', it can be seen that 'brand' accounts to being considered as such. In furtherance of the same, Destination Branding amounts to 'mark under Section 2(1)(m) of the Trademarks Act, 1999. The second aspect of requirement can be seen as according to Section 2(1)(zb)⁸ where a mark is essentially required to fulfil the aspect of 'graphical representation'.

"trademark" 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;

Considering the above said definition of a 'trademark', the very presence of an 'expression of a 'word/image' in branding of a nation (Destination branding) which is graphically represented amounts to the fulfilment of the criterion laid down by Section 2(1)(zb). In furtherance of the said provisions of the Trademarks Act, 1999, it can be stated that the technicality of Destination Branding if it carries a 'mark' as stated under 2(1)(m) and if represented graphically as under Section 2(1)(zb), then it satisfies the requirement of the said Trademark Act of 1999.

The major questions of research in the given context is whether there exists a legal framework for Destination Branding in India, which is coupled with

the major question of whether the existing legal framework of international Destination Branding is feasible to be adopted in India.

The objective of the research covers the examination of the existing legal framework of Trademark Act 1999 in India and the inclusion of Destination Branding under the concept of Trademark along with the analysis of the laws pertaining to Destination Branding in USA, Australia and New Zealand, Malaysia which thereby corroborates with the said research questions.

The methodology used for the research is non-doctrinal and analytical. It includes case studies, articles, journals and treaties. In the research, both primary as well as secondary data is used. This Research Methodology Adopts Qualitative Methodology For The Current Legal Study.

Distinguish Ability as a Key Factor to Determine the Destination Brand Mark

The key factor of Trademark as according to the defining clause of Trademarks Act is 'distinguish ability' which majorly states that general terms which holds no distinguishable status cannot be said to have a trademark.⁹ The very function of a trademark is to ensure that the product which holds the trademark is differentiated from that of other similar products. In furtherance of the same, there as on why the requirements of trademark is being discussed is to analyze the challenges the aspect of Destination Branding faces when it has to be granted a Trademark.

The primary understanding of Destination Branding is that the place which is being branded explicitly possesses some unique characteristics that thereby differentiates that place from that of others. However, the legal concern here is with respect to the following aspects

- (i) Express differentiation
- (ii) Advertisement function
- (iii) Consumer perspective creation

Delving into the aspect of 'Express Differentiation', this concept explains that there is a requirement of 'distinguishability' between the product which claims trademark and that there has to be an express 'product differentiatial function' that the trademark is required to show case. In the case of *Himalayan Drug Company v SBL Limited*¹⁰ the ratio stated that the distinguishable feature of the Trademark should not be 'identical' as such. Further,

in the case of *Carlsburg India Private Limited v Radico Khaitan*¹¹, the Delhi High Court stated that the function of trademark is to ensure that the trademark given to the said product ensures that it distinguishes the product of its own from that of others. Furthermore, in the case of *Phone Pe Private Limited v Ezy Services and Anr*¹² it was stated that there is an essential requirement that the trademark is essentially dominant and differentiates from that of other marks.

Adhering to the above requirements of a Trademark, the concept of Destination Branding shall be examined in the same bracketed criterion in order to ensure legal compliance. There is no doubt that Destination Branding tries to showcase the 'unique'/'peculiar' characteristics of the nation/state in concern. However, the legal concern arises when Destination Branding merely fulfills one criterion of distinguish ability but, seems to portray ambiguity in various other criterion such as 'product differentiation function and advertising function' of the trademark. The same can be understood in a practical aspect of analysing each trademarked brand of destination i.e.

The Trademark Granted to Incredible India [*Incredible India*]²

This branding, often referred to as the logo was granted by Ministry of Tourism, Government of India. The 'exclamatory mark' used in the mark signifies the 'I' of India. The major purpose of this kind of branding was to ensure that Indian subcontinent is 'labelled' to show its dynamic nature. What started out as a campaign became established as a Trademark in the year 2002. The latest guidelines are issued by the Ministry of Tourism in the year 2011. The category of trademark applied is as under Class 39 of nice classification.¹³ This category explains 'transport of people, animal or goods from one place to another'. The status of the trademark as of 2023 [March] is that it is registered. The purpose of this trademark is stated to be that of 'promoting tourism' and that of increasing curiosity and interest of travelers in the rich culture and heritage in India.

Further, it can be seen that this was one of its first kind and in fact the start of 'Destination Branding' in India. Although the cause stands in ensuring goodwill and promotion of tourism activity in India, the ambiguity lies in the following aspects

- (i) Distinguishability and Product Differentiation Function: The trademark of *Incredible India*² is stated to be 'distinctive' and unique as

such due to which the criterion under 2(1)(zb)⁸ of trademarks stands accepted. The trademark further exhibits the distinguishability of the entire Indian subcontinent via a symbolic representation as such. However, the very purpose of trademark is not mere distinctiveness but to ensure that the said product which is granted Trademark has to be different from that of other products and this trademark thus granted fails to do the latter. In furtherance of the same, *'Incredible India'*² upholds the symbolism that the nation stands for, however, there is no 'product differentiation function' that this trademark is seen to be performing. Furthermore, there is an inherent line of differentiation between upholding the value of the product by exhibiting distinctiveness and ensuring that the trademarked product differentiates itself from other products. The latter is what stands missing in the trademarked product of *'Incredible India'*.² This logo shall uphold the nation's agenda of promoting tourism but nowhere differentiates itself from various other products as such due to which there arises a gap between the requirement of trademark law and the tourism sector with respect to destination branding. Although the trademark granted to *Incredible India*² showcases the advertisement function and distinguish ability which is required in a trademark, it fails to showcase the product differentiation function which leads to ambiguity. In order to summarize the above said requirements of Trademark Act, 1999⁶ and fulfilment criterion of Destination Branding, there arises a requirement for a legal norm to regulate the stated ambiguity as such.

Impact of Media on Destination Branding

This research focuses not only on destination branding *per se* but also ensures to understand its positioning in Media currently in India. Destination branding can be seen to be used on multiple websites, blogs, journals, magazines, images of search engines. The usage *prima facie* is not concerning or disputed here. However, the usage of these 'symbols, names, images, slogans and captions' prove authenticity. The minute any of these above said online sources use a destination mark, it is considered to have been indicating the usage of the said place thereby claiming indication to the said place. This thereby leads consumers to wholeheartedly believe that the said online source is a valid source. As per 'layman observer test'¹⁴ of trademark, a consumer/customer of average intellect and prudence may not completely re-

verify the said online source. Instead, the consumer may believe that the said online pages are in-fact capable of selling the original and the good with respect to the destination that is branded. Even though the trademark Act 1999 provides relief for infringement/passing-off, it nowhere establishes that Destination branding infringements can or cannot be considered. When the source in itself is questionable, there is no specific standard to claim when media infringes these destination brands which is hereby claimed to be considered as a trademark.

The counter argument for the same maybe concerning the fact that Trademarks Act 1999 is equipped to cater to online infringements. However, the concern here is not merely the Trademark being infringed but, it is about the trademark being infringed on various media and networking sites where the identification is not just about the infringement but also about the fact of infringement of destination branding, if any. This way, the duplicates increase reducing the authenticity of the said mark, once considered. Thus, Trademark Act should be read in corroboration with the Information Technology Act, 2000 (as amended in 2008).¹⁵

Existence of Trademark in Geographical Names

It is evident from the legal framework of Trademarks Act, 1999 as well as the precedents that, there is a stringent norm that Geographical names can be given trademark in India based on subjectivity of the case. Section 9¹⁶ of the Act clearly states that if the trademark being applied is "merely indicative of geographic allocation" then the trademark shall not be granted in such regard. However, there is no blanket ban on providing trademark status to geographical names. It is decided on a case-to-case-basis. In the case of *Gee Pee Ceval Proteins v Saroj Oil Company*¹⁷ the court stated that the geographical name of 'Chambal' had 'acquired' distinctiveness in the oil industry thus, geographical name can be granted a trademark in this regard. Further, in the case of *KRBL Limited v Vikram Roller Flour Mills*¹⁸ the court dealt with the aspect of whether 'INDIAGATE' in the arena of food can be provided trademark and whether there was deceptive similarity in furtherance of the same. On this note, it can be seen that the ongoing debate regarding whether a trademark containing the name of a place can be given trademark is an area with lacuna. There has to be substantial amount of 'acquired distinctiveness'

required to be proven for the name of a place to be given trademark in any area as such. In furtherance of the same, when tourism, in specific Destination Branding is considered, there are multiple issues that come into picture, few of which are

- (i) Whether the name of the place has 'acquired distinctiveness' with regard to Destination Branding?
- (ii) Whether misuse can be prevented in this regard when geographical names are granted Trademarks/Branded according to the destination?

Considering the Trademark of "*Karnataka, one state many worlds*", it can be seen that, it has been granted Trademark status¹⁹ under Class 42²⁰ which pertains to industrial and scientific development. The issue here is to state that, if any future brands claim to use this trademark in any other aspects for instance, in food and beverages etc. then the trademark shall stand passed off. Furthermore, the major issue is that 'Karnataka' if registered as a trademark, it restricts future users of this word/label in their respective marks as the word 'Karnataka' which is given trademark in the name of destination branding is a 'geographical name' and can be restricted under Section 9 of the trademark Act further leading to ambiguity as to whether the word 'Karnataka' in "*Karnataka, one state many worlds*" has acquired distinctiveness or not. Another example for the above said scenario can be brought forth by considering Kerala's Trademark that is titled as "*Kerala God's Own Country*".¹³ Although Kerala is a hub for tourist places and natural beauties but the beauty of the state remained unseen and unnoticed until the Kerala government launched its first travel and tourism campaign due to which Government of Kerala adopted the tag line "God's Own Country".¹³ The Same aspect of application stands evident, i.e., with respect to the aspect of a geographical name of 'Kerala' which may have an adverse effect of Section 9 of the Trademark Act on the mark *per se*. Furthermore, the trademark registered by M.P is *Madhya Pradesh, the heart of Incredible India*.²¹ Madhya Pradesh state registered the logo as a trademark under the province of the Trade Mark Act, 1999. The trademark employed by the State of Madhya Pradesh contains the trademark of the nation. As the trademark employed by Madhya Pradesh contains the trademark of the nation thus it can be viewed as an umbrella brand being used by the state

to benefit from the good name of the trademark while also contributing to the enhancement of the nation's trademark. This is another example of how trademark is being allotted to geographical names in the name of Destination Branding.

Therefore, there is a requirement of balance to be struck off between 'Promoting Destination Branding and preserving geographical trademarks. In order to resolve this inherent issue, it becomes essential to differentiate Trademarks and Geographical Indication with respect to Destination Branding in India.

Destination Branding and Geographical Indication

Geographical Indication as the name suggests states that there is protection to a product which originates from a specific destination. For instance, Nagpur Orange²², Mysore SilkSaree²³ and the like. Geographical Indications of Goods (Registration and Protection Act, 1999)²⁴ deals with the subject matter of Geographical Indication in India.

The reason Geographical Indication [referred to as GI hereon] is being discussed is because of the inherent interlink there exists between Tourism and GI. The concept of Destination Branding refers mainly to the concept of the 'Geographical Location' of a place coupled with the uniqueness of the place.

For instance, *Incredible India*,² *Karnataka, one state manyworld*,²⁰ *Kerala God's own country*¹³ contain geographical tags. However, the issue arises when these terms are provided Trademark instead of being registered as GI. Destination Branding is ingrained in the concept of Geographical Indication however, the legal trend in India states that these geographical names are protected as logo's/labels thereby amounting to a trademark. There exists a rift between Trademark and GI if seen with precedents as well, more so when Destination Branding is concerned.

In the case of *Tea Board v ITC*²⁵, it can be seen that there was a dispute between usage of the term 'Darjeeling' in Calcutta, where the court stated that Darjeeling although a very famously known Geographical name of a destination, seems to have acquired distinctiveness over usage in business due to which it is required to be protected as a Trademark as such when compared to GI. However, the takeaway in this scenario is the presence of a 'Geographical name' pertaining to a destination was primarily argued to be coming under GI.

Section 2(1)(e) of the GI Act²⁶ states as follows
"geographical indication, in relation to goods,

means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be."²

Considering the above definition it can be seen that the very purpose of destination branding as specified earlier is for the purpose of improving Tourism via the above said regions such as agriculture, trade and the like. The same reflects in the Section 2(1) (e) of the GI Act. However, all the Destination Branding aspects in India is solely dealing with Trademark when compared to that of GI. The trademark provided to *Incredible India* focuses on the technicality of the logo, label and the word. However, the overall protection that *Incredible India* is to ensure that the tourism increases in the geographical subcontinent of India which reclines towards GI when compared to that of Trademark. Thus, there lies inherent ambiguity between the granting of Trademark to destinations while they deserve a wholesome geographical protection in this regard.

The legal framework of India regarding granting of Trademark or GI to Destination Branding marks remain unaddressed due to the unexplored terrain of legalities present in India. Trademark solely protects the technical term of the destination branding while GI protects the overall entity of the destination branding, whereas the latter arena stands untouched in India due to lacuna in the existing Tourism and IP area.

Personality Protection of Destination Branding

Destination branding as a concept is different for different destinations be it a nation or state as such. However, whatever may be the conceptuality, the binding factor is with respect to the protection ensured to that destination by improving the brand value of the destination there by increasing tourism and trade.

"The idiosyncratic aspect of the brand-destination highlights the importance not only of how its identity is managed but also how its dimensions, such as personality, image and sources of inspiration are handled".²¹

This, although not an Indian definition, gives a

global approach by stating the importance of inculcating 'personality' to a brand. Furthermore, this statement is applied to destination branding in order to state that the destination requires protection as a 'personality' and such personality protection can be ensured by Intellectual Property Law via Law of Copyright.

Law of Copyright in Destination Branding

Copyright Legal Framework in India is governed by Copyright Act, 1957. India does not perse protect personality rights. This means to explain that Indian jurisprudence concerning Copyright believes that Copyright Act²⁸ is sufficient and does not require a special category just to protect 'personality rights',²⁹ because of the logical backing that if there is an original work²⁷ then that should be protected and not the personality of the person. Applying the same aspect to the concept of Destination Branding, it can be seen that the protection should be extended to the spirit of the destination as a whole. This is to explain the importance of creating attractive personality thereby adding great value to the spirit of the destination.

DBP/Destination Brand Personality is one of the lesser known/researched area. The basis of this kind of protection is that every destination has its own charm and spirit which is attributed as the personality of the destination. For example, Indian flora and fauna, cultural heritage, linguistic and religious diversity is what sums up to *Incredible India* as such. This aspect of Indian tourism via destination branding is what sums up to its personality as a whole there by distinguishing it from other destinations. This not only highlights the uniqueness of a destination but also protects its overall attributes.

The legal framework in India with respect to Copyright Act has recently started protecting personality rights on a case-to-case basis, however it stands limited to protection of personality of a juristic person. In furtherance of the same, there is absolute grey gap that exists in the Indian legal framework regarding protection of personality of a destination although it has humongous benefits with respect to destination branding as such. The laws pertaining to personality rights of Copyright can be extended to destination branding as a suggestive measure in order to improve the tourism and IP industry in India.

Legal Frame Work of Tourism Sector in India

From a general perspective it can be seen that there

is no 'defined terrain' for Tourism Law as such. Tourism Laws stand scattered and are spread over substantial aspects. Furthermore, it can be noticed that 'policies' seem to govern the Tourism Sector due to lack of presence of a statutory norm as such. The annexure to these policies shall further be broadened into the guidelines laid down by various Tourism Ministries of State and Union Territories. In furtherance of the same, it is evident that there is no stringent single norm that binds all Tourism laws together as such.

Countrywide, the applicability of Indian Penal Code³⁰ and Code of Criminal Procedure³¹ on tourists stand undisputed. This is done in order to ensure safety and security of the tourists and primarily to protect them from any possible crime prevalent. Furthermore, there is the existence of The Passports Act³² which governs the rules and requirements for entry and stay in India. Furthermore, the Foreigners Act 1946³³ governs the requirements for stay of foreigners in India. However, these statutes govern the tourists *per se* and not the tourism industry in India as such. It is *prima facie* evident that there is a persistent lack of legal regulation that governs legalities concerning Tourism in India, further in the area of Destination Branding which leads to subjective interpretation of case-to-case basis.

Furthermore, narrowing down, there exists a legal gap in the terrain of interlink between Tourism and Intellectual Property and will be safe to state that this are stands unexplored. In furtherance of the same, when each statute of Intellectual Property is examined, in relevance to Destination Branding, the following lacunas stand noticed.

Lack of Clarity in Trademarks Act,1999 with respect to Destination Branding

This Act encourages the concept of 'Destination Branding' by granting the status of 'trademark' to various destination names. However, there is no valid ground on which this Trademark is granted to this Destination branded marks. From the presented case studies of *Incredible India and Karnataka, one state many worlds* it is evident that the trademark was granted despite there being no presence of product differentiation function.

Ambiguity in Geographical Names and Geographical Indication

There is absolute lack of clarity with respect to whether 'geographical names 'can be protected under

Trademarks or under Geographical Indications, which is decided on a case-to-case basis. This affects the application of Destination Branding in India.

Lack of Personality Protection to Destination Branding

Neither the Copyright Act nor any other law in force at present in India provides a wholesome protection to 'personality' of the Destination via the scale of Destination Branding as such.

Scattered Tourism Policies

This is to explain that each state as the Ministry constituted shall operate according to their own requirements and norms. For example, Karnataka Tourism Policy 2020.³⁴ This is advantageous only to one extent where the adaption of rules can take place, however it stands disadvantageous to a large extent where there is no national norm to regulate the regional tourism policies via statutes.

Impact of Other Factors on Global Tourism Industry Concerning Destination Branding

In this advanced era of science, media and entertainment [to name a few], it can be seen that Destination Branding is not a mere depiction of any sort of location but it is also attached to the reason why a specific place or destination is of prime importance. For instance, India is known for its rich cultural heritage, UAE for its infrastructural supremacy, Brazil for its medical sector, Thailand for its Hospitality and healthcare.³⁵

Healthcare Tourism

Destination Branding is thy name a place. The minute a nation is remembered, it shall be associated with its uniqueness. Medical Tourism is defined with the purpose of maintaining, improving or restoring health through medical intervention.³⁶ Given that certain nations are known for its 'services' including medical services. The relevance of destination branding in this medical tourism is directly related to its destination significance and the medical service it offers to cater to the needy, not only in one's nation but also its impact on international country tourists visiting for specific medicinal requirements and niche medical services. Thus, medical tourism can give way to protection of destination and thereby to Destination Branding as a whole.

Wellness Tourism

World Health Organization as known, defines health as a state of "*physical, mental and social well-*

being and not merely the absence of disease or infirmity.” The reason this is being referred to is to understand that destination is not just about its rich cultural heritage but also about its inherent traditional healing methodologies that provides ‘wholesome wellness’. Thus, these destinations can be branded with wellness-based approach that gives it a wholesome approach and protecting destination branding will not merely end with the protection of its trademark but goes way beyond to expand its relevance to such complete fields such as wellness tourism. For instance, India is not only known for its rich traditional heritage but also its inherent practices such as Ayurveda, Yoga, Unani, Siddha and Homeopathy,³⁷ that was made into a ministry in itself for self preservation. Thus, destination branding has the serious potential to expand beyond its requirement of mere trademark protection.

Sports and Entertainment Tourism

Sports, and entertainment [through sports] has always been of interest that unites people of various destination and brings them together in ways more than one. A cricket match in England, Baseball in USA, Hockey in India, Sumo Wrestling in Japan unites people not merely for the destination but the sport and the entertainment that comes with it that the nation [the destination] has to offer. This significantly contributes to the Nation’s economy and provides a global placing for the destination.³⁸

Food and Destination Branding

Food draws people. Food is not only a consumable object but a community binder. This is included solely to establish the relation between food and its relevance in Destination Branding. Cuisine, the style of prepping food, serving food and consuming food has become an opportunity for global tourists to reach a specific destination. Sushi in Japan, Street food of India, Pizza of Italy and the like brings people together and the destination becomes ‘known for it’ and the protection for the same maybe extended through trademarking the destination to preserve the food based heritage of a specific nation.³⁹

Suggestions and Altercations to the Indian Legal Framework with Respect to Tourism Sector and Destination Branding

There is a stringent requirement to introduce a nationalized Tourism Statute to avoid self-reservations by states and Union Territories via their

Ministry of tourism and to avoid arbitrary policies that raises ambiguity. Further there is a requirement for a specific legal structure that controls and regulates the requirements of tourism in India which shall further provide for a specific section of protection of Intellectual Property Laws, which shall help in

- (i) Categorizing of Tourism Sector
- (ii) Protection of Destination Branding inconsonance with the IP norms of the nation
- (iii) Ensures that multiple statutes need not be referred as there is a requirement for a centralized legislation.
- (iv) A voids numerous policies in various states regarding regulation of Tourism Industry.
- (v) Introduction of a regulatory body concerning Online Trademark infringement specifically relating to Destination Branding

Judicial Pronouncements Concerning Destination Branding

The approach of ‘create right, credit right’ functions well only when the creation is ‘protected right’. Thus, this navigates this research towards the approach of Judiciary in India concerning Destination Branding. Till July 2025 [as far as this research is concerned] there is no specific dispute the Indian Courts have dealt with concerning Destination Branding specifically. However, the reasoning for the same is with respect to the lack of protection of ‘Destination Branding’ *per se* in India. The possibilities of a dispute peaks when there is arbitrariness due the said lack of protection in India. The already well-equipped judiciary in India can provide for a decisive input concerning cases of Destination Branding when its protection is coded in Trademarks Act, 1999. Additionally, the prospective disputes arising in mere future concerning Destination Branding will be at a position of resolution when the coded legality comes into play. This research has thereby highlighted the possibility of upcoming cases concerning the said concept of Destination branding considering its contemporary existence.

Cross- Country Perspective Regarding Destination Branding

This part analyses various countries perspective and legal take on Destination Branding. The same shall be compared with the Indian Tourism and IP industry in order to provide a wholesome perspective

regarding Destination Branding and its legalities.

Destination Branding in New York, USA

The logo that New York is known for is '*I Love NY*'⁴⁰ which is said to have been coined by Mr. Milton Glaser in the year 1997. Globally New York was seen to have pioneered in such a logo presentation. This logo became the state logo and was owned by The New York State Department of Economic Development considering the aspect that Destination Branding led to economic inventory' surprise. This logo was registered as a trademark and the license for the same is retained by the state.

In the case of *Elsemere Music v NBC*⁴¹ The violation of licensing of theology was seen to have been done by unauthorized use of the logo by airing the jingle containing the trademark of *I Love NY* non 'Saturday night Live' show on the Television due to which they were heavily fined and penalised.

Destination Branding in New Zealand

New Zealand is known to have come up with the logo along with a tagline of 100% pure with an aim of ensuring to build a strong tourism sector in New Zealand as a major aspect of marketing, thereby ensuring that destination is branded as a key tourist destination. This logo is trademarked and owned by a Board of Directors as according to New Zealand Tourism Board Act, 1991⁴² here by appointed by the Ministry of Tourism.

Destination Branding by Australia

*Tourism Australia*⁴³ is the well-known/famously registered Trademark registered by Government of Australia. This permits the licensing of the mark to be shared in relation to goods and services used with prior consent from the Government. Every applicant who desired of using the mark is required to ensure that the mark is not used in a manner which is likely to be detrimental to the interest of the Tourism of Australia.

Comparative Analysis of Legal Framework of Destination Branding

Table 1 not only provides for the destinations branded, the authority branding the destination, the authorities protecting the destination and the image or word or logo that is protected, the law that exists for the same but also inherently explains the difficulty in identifying the 'legality' under which each mark is protected. This is mainly because there is lack of clarity concerning the destinations and the source

branding the same. These further spreads ambiguity concerning the destinations branded. Thus 'source identification' becomes an inherent difficulty in the given scenario.

Comparing the abovementioned nations of USA [in specific New York], New Zealand and Australia to that of Destination Branding in India, it can be seen that USA has a stringently applicable and structured legal norm concerning 'Destination Branding'. There are evident case precedents that New York has dealt with regarding 'unauthorized use of destination branding'. This shows a streamlined structure that stands lacking in India. India when compared to that of New York solely in the perspective of Destination branding, the following are these indifferences

India deals with Destination branding as a comparatively new arena in tourism. Further, it can be seen that India relies heavily on the aspect of Trademark Law to decide Destination Branding (for legal sanction) whereas New York's ministry of tourism takes care of tourism and IP protection in an amalgamated manner. The latter more convenient legally and suggested as an adaptable legal framework in India.

Comparing the Destination Branding norms of New Zealand and Australia to that of Indian aspect of Tourism and Destination Branding, the following are the sole differences and adaptabilities.

- (i) India is 100% relying on the Governmental sector for Destination Branding and legal sanctions whereas; New Zealand states that protection to its Destination Branding may be a public-private partnership. This way there increases the interest and investment of private sectors in Tourism Sector. This latter reasonable partnership between public-private divide can be explored in the Indian Tourism Industry as well, as apart of altercation to the legal scenario.
- (ii) When compared to that of Australia, Indian Tourism laws stand appreciated because of the prevalence of autonomy for the states and Tourism Ministries of these states with respect to policy making in relevance to tourism, here Destination Branding. Whereas on the other hand, Australia seems to have been centralized in terms of destination branding which prevents autonomy of states to form their own destination brands without prior legal sanction from the center.

Table 1 – Comparison			
Mark protected	Country	Destination branded by	Legality available
	INDIA	Protected on application basis.	Trademarks Act, 1999
	USA	Tri-Valley Visitor and Convention Bureau	NA
	Switzerland	Trademark Office of the European Community. Swiss	Federal Act on the Protection of Trade Marks and Indications of Source [1992]
	USA	Not specified	Trademark Validating Body: New York State Department of Economic Development Trademark Protected under: Lanham Act (Trademark Act of 1946)
	New Zealand	Not Specified	Primary Legality: Trademark Law 2002 Trademark Validating Body: New Zealand Intellectual Property Office (IPONZ)

(iii) However, one last observation concerning Destination branding with respect to Media perspective is that neither of the said countries seem to have had the exact online legal framework concerning Trademarking for Destination Branding as such.

Conclusion

It can be seen from the abovementioned aspects that ‘Destination Branding’ stands extremely relevant as well as significant in terms of the Tourism Sector in India. The laws regarding tourism are seen to have been extremely scattered and arbitrary due to which there exists an amount of difficulty in tracing the legal i.e. statutory relation between Intellectual Property in the Tourism Sector. In the second half of this research, it is evident that the major concern is not only regarding Destination branding but in fact the online utilization of Destination Branding by numerous online resources.

As per the re-consideration with the objective, the conclusion is as drawn below

(i) *Inclusion of Destination Branding in the Trademarks Act, 1999*: There is a very noticeable lacuna in the Trademark Act, 1999 in India as there is no specific legality in the said Act

concerning the concept of Destination Branding as such. This makes the further chain of events ambiguous as there is no implied understanding of the utilization and protection of Destination Branding as a Trademark. Thus, this research strongly recommends the inclusion of Trademarking Destination Branding in India under the already existing Trademark legality of Trademark Act 1999.

(ii) The research concludes by providing for a legalized structure by way of an intertwine in the aspect of trademark and Destination Branding under Tourism legality. This thereby provides for an inter-disciplinary structural framework providing a bridge between Tourism aspect of Destination branding. Although this research is not proposing a separate legislation encompassing Destination Branding in Trademarks, the research justifies the intermingling of the said aspects in their respective special frameworks. Special frameworks here, indicates the respective legalities being well equipped with the concept of ‘Destination Branding’ as a part and parcel of inclusivity. This individual inclusion provides wholesomeness to the framework of Tourism legality. This means to indicate that Destination

Branding be included as a Tourism sector and be Incorporated by Ministry of Tourism in India as a part and parcel of providing the rightful credit each state deserves.

- (iii) **Prevention of Infringement:** The reason for protecting a creation is to ensure to prevent the ‘misuse’ of the creation. In a similar manner, punishment ensures such distinctive ‘marks’ of Destination Branding is not infringed or duplicated. Duplication of the said marks becomes easy with the growth of Artificial Intelligence and available sources on the internet undoubtedly. However, if an international body is incorporated globally, the convention shall suggest to punish the infringers of the said destination branding on an online or offline source, based on the requirement. Thus, protection of the Destination Branding also calls for prevention of misappropriation of Trademark as such.
- (iv) **Inclusion of Destination Branding Protection via Information Technology Act, 2000:** Narrowing down to the concept of Destination Branding Online, it is suggested that Information Technology Act, 2000, as amended in 2008 which is in fact a vast Act catering to numerous online legal domains be inclusive while dealing with Destination Branding Online. This ensures to protect Destination Brandings against vast infringement on the online medium that persists. This is of course, suggested to be read with Trademarks Act 1999.
- (v) **Inclusion of Destination Branding Globally:** A cross-country analysis has shown the aspects of appreciable effect Indian Law has when compared to that of USA, Australia and New Zealand. This is to state that, India provides opportunities for all states and Union Territories to have their own conceptual Destination Branding without emphasizing on autocratic norms, which has helped in show casing the diversity present in the nation thereby promoting Tourism industry as a whole. However, it is evident that there is definitely a requirement to ensure check and balance on Destination Branding in India and this can be adopted from the legal structure present in New Zealand and Australia. Overall, this unexplored terrain of Destination Branding requires a legally streamlined structure to ensure the development of the Indian Tourism industry.

Lastly, this research suggests for a combined ‘International Body to regulate Destination Branding’ which therefore provides for a ‘one stop legality’ for Destination Branding thereby be incorporated under World Intellectual Protection Organization. This thereby incorporates a solution-based approach to the spread-out legality of Destination Branding inculcating Trademark in it.

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