

THE CONCEPTS OF EXHAUSTION AND PARALLEL IMPORTATION IN THE CONTEXT OF TRADEMARK RIGHTS: SRI LANKAN AND COMPARATIVE PERSPECTIVES

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ABSTRACT

The purpose of this paper is to analyse the legal implications of the concepts of exhaustion and parallel importation in the context of trademark rights. It expounds the legal rationales underpinning the recognition of the two concepts as well as the deep-rooted legal relationship existing between them. The paper also discusses the applicability of provisions of the TRIPS Agreement on the issue of exhaustion and parallel importation, whilst pinpointing that the absence of an affirmative international standard on these matters has deepened the legal chaos in this area of law.

An attempt is made to briefly survey how the selected jurisdictions have tackled these two murky legal concepts, especially through judicial creativity. Finally, it evaluates the strengths and weaknesses of Section 122 (b) of the *Intellectual Property Act*, No.36 of 2003 of Sri Lanka, the statutory provision which deals with the issues of exhaustion and parallel importation and suggests law reform for the purpose of dispelling the ambiguity prevalent in the statutory language.

1. THE CONCEPT OF EXHAUSTION AND ITS LEGAL RATIONALE:

In the eyes of the law, a ‘trademark right’ is a monopolistic tool which confers on the trademark owner the ‘exclusive’ right to use and exploit the trademark. A corollary of this is that, the trademark owner can preclude third parties from using the identical or deceptively similar imitations of the mark on similar or even different¹ goods without his consent.

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¹ In the case of well-known marks, the protection may extend to non-competing or dissimilar goods.