

TRADE MARK LAW IN SRI LANKA AND THE UNITED STATES: A COMPARATIVE OVERVIEW

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Trade marks are signs that serve to distinguish the goods or services of one enterprise from those of other enterprises.¹ They enable consumers to choose among competing goods and services and help producers to secure a competitive advantage in the marketplace. Because of their economic importance, trade marks are protected and regulated in every country of the world.² In Sri Lanka, they are governed by Part V of the Code of Intellectual Property Act, No. 52 of 1979;³ in the United States, they are regulated principally by the Trade Mark Act of 1946 (Lanham Act) as amended.⁴ The purpose of this article will be to compare the legislation of the two countries in order to gain a better understanding of both systems of trade mark protection.

Functions of Trade Mark Protection

The trade mark legislation of every nation must balance the sometimes inconsistent interests of consumers and producers. The primary effect of most trade mark laws is to grant enterprises a monopoly right, known as an exclusive right, over the use, licensing and assignment of their trade marks. As with all grants of monopolies, limits must be placed on the exercise of the exclusive right to ensure that it does not give rise to abuse. The objective of trade mark legislation is to achieve an appropriate equilibrium between the grant of monopoly rights and the limitations placed on those rights in order to reconcile the disparate interests of consumers and producers.⁵

Consumers depend and rely upon trade marks to identify goods and services and as a guideline of consistent quality. They should have the right to assume that goods or services sold under a particular trade mark originate

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