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ACCOUNTING FOR EXTERNALITIES IN TRADEMARK LAW: RETHINKING OVERPROTECTION AND INFORMATIONAL USE

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Abstract

When trademark law becomes a barrier to sustainability rather than a bridge to consumer trust, the very foundations of intellectual property (hereinafter referred as 'IP') protection demand reconsideration. This paper examines the evolving landscape of trademark law in India, focusing on how current enforcement practices create unintended economic and social consequences by overlooking the externalities inherent in trademark use. Drawing on the theory of trademark externalities, the study analyzes how traditional trademark protection, while designed to prevent consumer confusion and protect brand goodwill, has expanded beyond its foundational purpose to restrict socially beneficial activities, including resale, refurbishment, comparative advertising, and upcycling. The research reveals a critical disconnect between trademark law's protective mechanisms and the realities of modern commerce, where informational uses of trademarks generate positive externalities that reduce consumer search costs and promote sustainable consumption. Through examination of key Indian judicial decisions and statutory provisions, the paper demonstrates how ambiguous language around "material alteration" and inconsistent enforcement practices create legal uncertainty that disadvantages legitimate economic actors. The analysis proposes a balanced framework that distinguishes between informational and deceptive trademark uses, advocating for judicial guidelines that recognize beneficial externalities while maintaining consumer protection. By integrating principles of transparency, right to repair, and sustainability into trademark enforcement, the legal system can evolve to serve both private brand interests and broader public welfare in an increasingly complex commercial environment.

Keywords: *Trademark Externalities, Overprotection, Informational Use, Material Alteration, Sustainable Commerce.*

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INTRODUCTION

From a traditional perspective, the trademark law has aimed to serve two main purposes: protect the goodwill of businesses and ensure that the consumers are not misled about the source of goods or services.[1] This helps to build brand identity by granting exclusive rights over marks that identify the origin of a product. This facilitates consumer trust. However, in the past few years, there has been a noticeable expansion of the interpretation and enforcement of trademark rights, especially with the rise of global markets and digital commerce.[2]

Trademark Overprotection has led to situations where the law restricts the use of marks which may not even cause confusion [3] or deception. This kind of overreach has started affecting environmentally and socially beneficial activities like resale, refurbishment, comparative advertisement, parody, and upcycling activities that serve either an informational purpose or a broader public interest.

The issue arises when enforcement authorities and Courts[4] prioritize brand control over assessing actual consumer confusion or harm. David W. Barnes' [5] theory of trademark externalities highlights that trademarks like copyrights and patent, produce a spillover effect which is both positive and negative.[6] For example, a reseller sometimes mentions about a brand to describe their refurbished product, or an upcycler uses a logo in a creative product, this generates an informational value for the consumers and a competitive value for the market. This further reduces search costs and enables sustainable consumption. Yet, trademark law treats such uses as infringement, discarding the economic, environmental, and social benefits that this creates.

This paper critically examines how the trademark law in India handles such externalities where the use of a trademark is more informational rather than deceptive. The central problem is in the failure of the legislature to distinguish between the two domains: the creativity domain and the fraud domain.[7] The courts also rely on rigid doctrines without accounting for the realities of consumer perception or market practices.

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[1] Gideon Parchomovsky and Peter Siegelman, "Towards an Integrated Theory of Intellectual Property" 88 Virginia Law Review 1455, 1463 (2002).

[2] Louisa M. Pfeifer, Thomas F. Schreiner and Henrik Sattler, "The role of consumer-based brand equity on the prolongation of trademarks" 32(2) Journal of Brand Management 94-108 (2025).

[3] David M. Tichane, "The Maturing Trademark Doctrine of Post-Sales Confusion" 85 Trademark Reporter 399 (1995).

[4] Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries Ltd. & Ors., (2018) 2 SCC 1.

[5] David W. Barnes, "Trademark Externalities" 10 Yale Journal of Law and Technology 1 (2007-2008).

[6] Brett M. Frischmann and Mark A. Lemley, "Spillovers" 107 Columbia Law Review 257, 265 (2007).

[7] *Supra note* 1 at 1470.

UNDERSTANDING TRADEMARK EXTERNALITIES:

Externalities are the "benefits or costs of an individual's activity that the individual does not receive or bear."[8] The law and economics of IP have traditionally emphasized that internalizing these externalities through the rights aligns the private incentives with social welfare.[9]

Externality theory has recently gained traction for understanding the design of copyright law[10] and patent law[11]. There are external benefits which arise when others gain from a creator's or innovator's efforts without providing compensation. Trademark Law presents a unique landscape where externalities in the form of spillovers play an important role in market dynamics.

David W. Barnes[12] applied the theory of externalities to trademark law, which is often times seen as a part of the "competition and fraud" domain. Copyright law and patent law encourage creation, while trademark law protects consumers from being misled and brand owners from counterfeiting. However, Barnes argues that even in the trademark law, externalities exist and are often ignored.[13]

These externalities can lead to positive spillovers, such as:

- Comparative advertising, where one product is compared to another using brand names, helping consumers make informed choices.
- Resale and refurbishment, where identifying a product by its original brand name helps buyers understand its value and origin.
- Artistic or political commentary, where logos and trademarks are reused to convey critique or humor.
- Upcycling in fashion and electronics, where old branded items are reused creatively and sustainably.

On the other hand, there are negative externalities like:

- Consumer confusion, if people are misled into thinking a product is from a particular brand when it is not.

[8] R.B. Ekelund Jr., R.W. Resseler and R.D. Tollison, *Microeconomics: Private Markets and Public Choices* (Addison Wesley, Boston, 7th edn., 2006).

[9] W.M. Landes and R.A. Posner, *The Economic Structure of Intellectual Property Law* (Harvard University Press, 2003).

[10] Jeffrey L. Harrison, "A Positive Externality Approach to Copyright Law: Theory and Application" 13 Journal of Intellectual Property Law 1 (2005).

[11] Brett M. Frischmann and Mark A. Lemley, "Spillovers" 107 Columbia Law Review 257, 265 (2007).

[12] David W. Barnes, "Trademark Externalities" 10 Yale Journal of Law and Technology 1 (2007-2008).

[13] *Id.*

- Brand dilution, where overuse or misuse of a mark may weaken its distinctiveness or reputation.

Trademarks are also mixed goods in nature; they are private goods for the brand owner (offering exclusive rights),[14] but they also serve as public goods, providing information that helps consumers navigate the market. This dual role creates a tension in law: when trademark protection becomes too strict, it may block useful, truthful uses of marks that help the public or support healthy market competition.[15]

A 2023 study indicates that modern consumers are increasingly discerning, particularly in digital marketplaces. When sellers provide clear disclosures such as labeling products "refurbished," "open-box," or "reconditioned" consumers are generally not confused about the origin or status of the goods.[16] Empirical evidence from markets like Amazon Renewed and Flipkart Refurbished in India shows that transparent labeling and branding disclaimers play a significant role in informing consumer expectations.[17] This undermines the justification for overbroad enforcement premised on hypothetical confusion. Trademark law must evolve to reflect these empirical consumer realities, rather than assume deception where none exists.

A key concept here is the difference between informational use and deceptive use. Informational use occurs when a trademark is used simply to describe a product accurately, such as labeling a product "refurbished Samsung phone."[18] Deceptive use, by contrast, falsely implies endorsement or origin, leading consumers to believe the product is new or officially backed.[19] Most of the positive externalities stem from transparent, informational use, which arguably should not be treated as infringement.[20]

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[14] Swadheena Joardar, "Economic Perspective of Trademarks" Issue 2 International Journal of Law, Management and Humanities 318 (2022).

[15] *Id.*

[16] Aliyu Sanni et al., "Understanding the Factors Affecting Consumers' Behaviour When Purchasing Refurbished Products: A Chaordic Perspective" 71 Journal of Retailing and Consumer Services 103238 (2023).

[17] T.R. Choudhury and S. Mishra, "Exploring Consumer Attitudes towards Remanufactured and Refurbished Goods in the Indian E-Marketplace" 53(1) Indian Journal of Marketing 32–42 (2023).

[18] Jake Linford, "An Information Theory of Intentional Trademark Infringement" 62 Houston Law Review 275 (2024).

[19] G. Mythili, "A Critical Analysis on Deceptive Similarities of Trademarks in India" 4(4) International Journal of Scientific Research in Modern Science and Technology 21–31 (2025).

[20] *Id.*

OVERPROTECTION IN TRADEMARK LAW

Originally, trademark law was designed to serve a narrow and essential purpose: to help consumers identify the source of a product or service and prevent confusion in the marketplace. However, over time, the scope of trademark protection has expanded well beyond this foundational goal. Today, trademark owners often assert rights not just against direct deception, but also in cases where there is no real confusion, leading to what many scholars and courts recognize as overprotection.[21]

Expansion of Rights Beyond Source Identification

Modern trademark litigation often goes beyond preventing consumer confusion at the point of sale. Instead, it targets uses that merely associate with a brand in a broad, non-misleading sense.[22] This can result in restricting legitimate uses of trademarks such as parody, commentary, resale, or functional references even when there is no real risk of confusion about who made or endorsed the product.[23]

Legal Doctrines Enabling Overprotection

Certain legal theories have contributed significantly to this trend:

- **Initial Interest Confusion**: This doctrine allows liability even when the consumer realizes the correct source before making a purchase.[24] For example, if someone is briefly misled by a web advertisement using a competitor's trademark to draw attention, it can still be considered infringement even if no actual confusion remains at the time of sale.
- **Post-Sale Confusion**: Here, infringement is claimed based on what observers might mistakenly think after the product is purchased, not what the buyer believes.[25] This can affect sellers of look-alike or repurposed goods (e.g., refurbished luxury items), even when the buyer is fully informed.[26]

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[21] Andrew Griffiths, "Trade Marks Plus? The Role of Trade Marks in the Global Economy and the Danger of Over-Protection" 28 Liverpool Law Review 107–141 (2007).

[22] Yvette Joy Liebesman and Benjamin Wilson, "The Mark of a Resold Good" 20 George Mason Law Review 157 (2012).

[23] Jordan Phelan, "Infringement or Identification? Nominative Fair Use and the Resale of Luxury Goods" 91 Fordham Law Review 757 (2022).

[24] Stacy L. Dogan and Mark A. Lemley, "Trademarks and Consumer Search Costs on the Internet" 41 Houston Law Review 1033, 1035 n.8 (2004).

[25] David M. Tichane, "The Maturing Trademark Doctrine of Post-Sales Confusion" 85 Trademark Reporter 399 (1995).

[26] *Id.*

- **Dilution** (Blurring and Tarnishment): These doctrines protect famous trademarks from losing their distinctiveness or being associated with an inappropriate or negative way, even without any confusion or competition.[27] For example, using a luxury brand's logo in an art piece or a political statement could be challenged as dilution.

Impact on Free Speech, Innovation, and Competition

The rise of these expansive doctrines can harm free expression, particularly in cases involving parody, satire, and commentary. Artists, critics, and even resellers may hesitate to use marks, fearing legal consequences.[28] This also affects innovation and competition, especially in markets like repair, resale, or upcycling, where accurate use of trademarks provides useful information to consumers.

When trademarks are treated like absolute property rights, rather than informational tools, the law may end up protecting brand image at the expense of public interest. This overprotection also stands in tension with India's broader policy goals around environmental sustainability and responsible consumption. For instance, the **E-waste (Management) Rules, 2022**[29] encourage the reuse and refurbishment of electronic goods to minimize landfill pressure. India's commitments under the Sustainable Development Goals (SDGs), notably *Goal 12* (Responsible Consumption and Production) emphasize the need for a circular economy, where products are repaired, reused, and recycled.[30]

Overbroad trademark enforcement can directly frustrate these objectives, especially when secondary markets for refurbished electronics or upcycled fashion are curtailed by legal uncertainty. Reforming trademark law to accommodate such practices is not just doctrinally sound, it is environmentally imperative.

Comparative Overview

The issue of overprotection has been widely debated across jurisdictions:

- In the United States, courts have actively developed doctrines like initial interest confusion and dilution, which tend to favor trademark owners. However, the First

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[27] Clarisa Long, "Dilution" 10 Columbia Law Review 1029, 1059, 1061 (2006).
[28] *Mattel, Inc. v. Walking Mountain Products*, 353 F.3d 792, 807 (9th Cir. 2003).
[29] E-waste (Management) Rules, 2022, GSR 801(E), dt. 2-11-2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated 2-11-2022.
[30] Tiffany Richardson, Madeleine Orr and Nicholas Watanabe, "An Overview of Sustainable Development Goal 12" in *The Routledge Handbook of Sport and Sustainable Development* 289 (2022).

Amendment[31] has been invoked in some cases to defend expressive uses (e.g., in parody or artistic content).

- One of the landmark cases on this issue is ***Kirtsaeng v. John Wiley & Sons, Inc.***,[32] where the U.S. Supreme Court held that the first-sale doctrine applies internationally, thereby affirming the right to resell genuine goods without constituting infringement.
- Similarly, in ***L'Oréal SA v. Bellure NV***,[33] the UK courts considered the limits of comparative advertising and acknowledged that informational use can serve legitimate consumer interests despite potential brand discomfort. In jurisdictions like Canada and Australia, courts have also leaned toward a more pragmatic approach, balancing trademark rights with freedom of speech, competition norms, and market realities.[34]
- The European Union adopts a relatively more balanced approach, particularly under the EU Trademark Directive and CJEU case law, where uses of trademarks for descriptive, comparative, or non-commercial purposes are often permitted.[35] Still, even in the EU, protection of well-known marks can be strict, especially under dilution rules.[36]

Indian courts, while rooted in the same common law tradition, can benefit from these precedents as guiding analogies when confronted with informational or secondary use disputes.

INDIAN TRADEMARK LAW: STATUTORY FRAMEWORK AND JUDICIAL TRENDS

Indian trademark law is primarily governed by the **Trademarks Act, 1999**,[37] which provides a legal framework for protecting brand identity and ensuring fair competition. The Act not only defines what constitutes trademark infringement but also recognizes specific limitations and exceptions, especially in the view of international trade, resale, and repair. While the purpose of trademark protection is to prevent consumer confusion and uphold brand reputation, it is equally important to ensure that legal enforcement does not stifle legitimate secondary markets or restrict access to information.

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[31] *The Constitution of the United States of America*, amend. I.

[32] 568 U.S. 519 (2013)

[33] [2009] EWCA Civ 103 (UK)

[34] Michael Handler, "Reimagining Trademark Exhaustion: Does Australia's New Defense Offer a Way Forward?" in *Charting Limitations on Trademark Rights* (Oxford University Press, 2021), UNSW Law Research Paper No. 19-93 (2019).

[35] Lavinia Brancusi, *EU Trade Mark Law and Product Protection: A Comparative Analysis of Trade Mark Functionality* (Taylor & Francis, 2024).

[36] *Id.*

[37] *The Trademarks Act, 1999 (Act 47 of 1999).*

Section 29[38] of the Act lays down the grounds for infringement, allowing the trademark owner to take action against any unauthorized use of a mark that is identical or deceptively similar to their registered mark. However, this right is not absolute. **Section 30**[39] provides crucial limitations on the scope of trademark rights, acknowledging situations in which use of a registered mark may be permissible. Of particular importance is **Section 30(3)**,[40] which incorporates the principle of international exhaustion. According to this provision, the trademark owner cannot prevent the further sale of genuine goods once they have been lawfully placed on the market anywhere in the world, provided there has been no material alteration or impairment of those goods.

Despite this protective exception, the law fails to define what constitutes a "***material alteration***," leading to ambiguity and inconsistent application. This vagueness has allowed enforcement authorities and rights holders to adopt a rigid stance, frequently claiming infringement even in cases where products are merely repackaged, refurbished, or honestly resold. This legal uncertainty has had a chilling effect on the refurbishment and resale industry in India, particularly in the electronics sector, where brand names often serve an informational purpose.

Indian courts have increasingly been called upon to interpret these provisions in light of growing disputes involving refurbished goods. In ***Western Digital v. Hansraj Dugar***[41], the Delhi High Court adopted a more flexible approach, allowing the import of refurbished hard disk drives bearing the *WD* mark. The court emphasized that the goods had not been tampered with and that the importer was transparent about the refurbished status, the absence of warranty, and the lack of brand backing. This judgment marked a notable shift from the earlier strict interpretations, recognizing that consumer awareness and disclosure play a critical role in avoiding deception.

Earlier cases had laid the foundation for this evolving approach. In ***Western Digital v. Amit Tanna***[42], the court permitted the sale of used hard disk drives where no repair or alteration had taken place and the nature of the product was clearly communicated to the consumer. However, in ***Western Digital v. Raaj Computers***[43], the court took a stricter view, holding that the sale of refurbished drives under the *WD* mark amounted to passing off, due to insufficient consumer disclosures.

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[38] *The Trademarks Act, 1999 (Act 47 of 1999), s. 29.*

[39] *The Trademarks Act, 1999 (Act 47 of 1999), s. 30.*

[40] *The Trademarks Act, 1999* (Act 47 of 1999), s. 30(3).

[41] CS(COMM) 586/2019.

[42] CS(COMM) 359/2016.

[43] CS(COMM) 677/2019.

A further development came in ***Seagate Technology LLC v. Daichi International***[44], where the court allowed the sale of refurbished goods where the original mark had been removed and replaced with the seller's own branding, accompanied by full disclosure. This decision acknowledged the importance of the right to repair and the consumer's right to access truthful product information.

While the judiciary is slowly moving toward a more balanced perspective, administrative enforcement remains a significant obstacle. Under the IPR (Imported Goods) Enforcement Rules, 2007,[45] Indian Customs can detain goods based on complaints from trademark owners, often acting on technical reports without thoroughly evaluating whether the goods qualify for protection under Section 30(3).[46] This disconnect between statutory intent and regulatory practice has led to delays, demurrage charges, and financial losses for refurbishers and importers. The overreliance on brand-owner assertions and the absence of clear guidelines on what constitutes "*material alteration*" contribute to a climate of uncertainty.

TOWARDS A BALANCED FRAMEWORK

To address the issue of overprotection in trademark law and promote a more socially responsive regime, the framework must adopt certain primary solutions those that directly recalibrate trademark enforcement and ancillary measures which support, enable, or clarify those reforms.

A. Primary Solutions and Alternatives

The most urgent corrective measure is to prioritize consumer disclosure over brand control. This idea has found strong support in American jurisprudence, particularly in the landmark U.S. Supreme Court decision in ***Champion Spark Plug Co. v. Sanders***.[47] In this case, the Court ruled that refurbished spark plugs bearing the original trademark could be sold as long as the seller clearly indicated that the goods were used or rebuilt. This approach served both the consumer's right to know and the brand owner's right to prevent deception, without unjustly penalizing legitimate resale. Such disclosure-based allowances are already functioning effectively in various

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[44] 2024 DHC 4193.

[45] *Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007*, GSR 509(E), dt. 8-5-2007, published in the Gazette of India, Extraordinary, Part II, Section 3(i).

[46] *Id.*

[47] 331 U.S. 125 (1947)

industries, including electronics and automotive parts, where aftermarket goods are a key part of the economy.

A second important reform comes from European trademark law, where the doctrine of exhaustion, codified in Directive (EU) 2015/2436[48] under the European Economic Area (EEA) regime ensures that once a trademarked product is lawfully placed on the market, the rightsholder cannot object to its resale even with minor modifications so long as the modifications do not damage the brand's reputation and full disclosure is provided. The case of ***Bristol-Myers Squibb v. Paranova A/S***[49] by the European Court of Justice exemplifies this balance, permitting the relabelling or repackaging of pharmaceuticals where necessary, provided consumers are adequately informed and the origin is not misrepresented. This model demonstrates how legal flexibility can preserve both trademark integrity and market access.

Additionally, several jurisdictions, including France, the European Union, and U.S. states like Massachusetts and California, have enacted or proposed "Right to Repair" laws that challenge restrictive trademark or design-based barriers to repair and refurbishment.

France was the first country in the EU to introduce a mandatory Repairability Index under the Anti-Waste for a Circular Economy Law (Loi AGEC), 2021,[50] which requires certain electronics to display a repair score. Similarly, the European Commission's Proposal for a Directive[51] on Common Rules Promoting the Repair of Goods[52] reinforces consumers' ability to access independent repair services, curbing monopolistic practices under IP.

In the United States, several states have introduced "right to repair" legislation, with great progress in Massachusetts Motor Vehicle Owners' Right to Repair Act, 2012,[53] which requires manufacturers to provide diagnostic and repair information to independent mechanics. These initiatives recognize that IP enforcement should not hinder consumers or third-party businesses from repairing, modifying, or reselling goods when done transparently and safely.

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[48] Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks.

[49] Case C-427/93, [1996] ECR I-03475.

[50] Anti-Waste for a Circular Economy Law, Law No. 2020-105 of 10 February 2020 (commonly known as Loi AGEC), France.

[51] *Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on common rules promoting the repair of goods.*

[52] *Proposal for a Regulation of the European Parliament and of the Council on Substantiating Environmental Claims* 2023/0083(COD).

[53] Massachusetts Motor Vehicle Owners' Right to Repair Act, 2012.

Another crucial development lies in the protection of comparative and nominative uses of trademarks. The EU's Directive[54] on Misleading and Comparative Advertising, as well as the U.S. nominative fair use doctrine,[55] ensure that brands cannot monopolize all forms of reference to their products. This legal position serves to reduce consumer search costs, improve market transparency, and promote healthy competition core positive externalities that are often undermined by overbroad injunctions in trademark disputes.

Finally, the issue of what constitutes "material alteration" of a branded good central to the question of refurbishing and resale has been addressed in clearer terms in countries such as Japan and EU member states.[56] Their courts and customs authorities have developed consistent standards distinguishing between functional modifications (which may violate rights) and cosmetic or informational ones (which generally do not).

This detailed understanding is something what the Indian legal framework lacks, particularly under Section 30(3) of the Trademarks Act, 1999 and the IPR (Imported Goods) Enforcement Rules, 2007. Clarifying this threshold through either legislative amendment or judicial guidelines would greatly reduce arbitrary seizures of refurbished goods and support sectors like electronics, fashion, and consumer goods that depend on reuse and sustainability.

B. Ancillary Measures and Supporting Actions

To support these reforms, judicial guidelines must be developed to assess trademark disputes in light of their externalitie**s**. This includes factoring in the market (e.g., grey markets), the likely understanding of consumers in that setting, and the broader utility of the mark's use. Such a holistic approach would help courts distinguish between genuinely misleading conduct and beneficial uses.

The growing "Right to repair" and sustainability movements should be incorporated as guiding principles. These movements emphasize the need for consumer autonomy, waste reduction, and product longevity objectives that legal interpretations of trademarks should align with, rather than obstruct.

Finally, legislative clarification is necessary to resolve ambiguity around terms like "material alteration." Without statutory guidance, enforcement remains inconsistent and sometimes arbitrary.

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[54] Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising

[55] *New Kids on the Block v. News America Publishing, Inc.*, 971 F.2d 302 (9th Cir. 1992).

[56] Supra note 51 at 16.

Defining material alteration in terms of perceptible change to product function or brand perception from a reasonable consumer’s standpoint would lend objectivity and predictability to legal outcomes.

CONCLUSION

This paper establishes that the contemporary expansion of trademark law beyond its core function of preventing consumer confusion has generated adverse externalities. The doctrines of initial interest confusion, post-sale confusion, and dilution, though intended to safeguard brand equity, have been applied in a manner that disproportionately privileges trademark proprietors at the expense of competition, free expression, and sustainable market practices.

From an Indian perspective, the jurisprudence around “material alteration” under Section 30 of the Trade Marks Act remains unsettled. Judicial inconsistency in cases involving refurbished or repurposed goods demonstrates that courts have not evolved a principled test to balance trademark rights against legitimate resale and repair markets. This doctrinal ambiguity undermines consumer welfare and imposes avoidable costs on small enterprises and refurbishers.

Accordingly, three legal conclusions emerge:

1. *Doctrinal recalibration is necessary* – Trademark law must be realigned with its foundational consumer-protection rationale, rather than functioning as a vehicle for brand monopolisation.
2. *Judicial clarification is urgent* – Indian courts must adopt clearer standards for assessing informational and non-deceptive uses of marks, drawing on comparative jurisprudence from the EU and US where *nominative fair use* and *exhaustion of rights* doctrines are more robustly defined.
3. *Legislative intervention is desirable* – Amendments to the Trade Marks Act should expressly accommodate socially beneficial practices such as the right to repair, resale, and upcycling, thereby ensuring that trademark law promotes sustainability and public interest in line with constitutional values under Articles 19(1)(a) and 21.

Thus, trademark law in India and globally must evolve from a framework of overprotection to one of measured protection, where private rights are preserved without eroding the equally vital goals of competition, innovation, sustainability, and consumer autonomy. Only then can trademark law operate not merely as a shield for proprietors but as a balanced regulatory instrument serving both private and public interests.