

SANGEETA PAL
Compliance Executive
Nikhil Agarwal & Associates

THE FIRST EVER OLFACTORY TRADEMARK IN INDIA

WHEN SMELL MEETS THE LAW

Scope of This Article

This article analyses the landmark acceptance of India's first olfactory trademark and the legal reasoning that enabled its publication in the Trade Marks Journal. It focuses on the challenges of graphical representation and distinctiveness for smell marks under the Trade Marks Act, 1999. The discussion also evaluates how this decision may influence the future recognition of non-traditional trademarks and sensory branding in India.

Introduction

A remarkable development and historic shift occurred in the evolution of Indian trademark jurisprudence when, on 24th of November 2025, the Controller General of Patents, Designs and Trade Marks accepted **India's first ever olfactory (smell) trademark** for publication in the journal. On 23rd March, 2023, an application - vide Application no. 5860303, was filed by **SUMITOMO RUBBER INDUSTRIES, LTD.**, a Japan-based body corporate, stating the mark to be an olfactory trademark having a floral fragrance/reminiscent of roses, which are used in tyres under class 12. The Registrar issued an examination report stating the mark is liable to be refused on the ground that **there is an absence of an established statutory or procedural mechanism for examining olfactory marks**. Moreover, a trademark is a mark that is capable of being represented graphically and should have a distinctive character. **In the present case, the smell mark is not presented graphically.**

Can a scent truly function as a trademark in the absence of explicit statutory recognition?

The applicant filed its reply to the examination report, relying on the following arguments –

- Firstly, **the applicant has already held registration of the olfactory mark in the UK since 1996**. The registration of the same in UK is indicative of the fact that olfactory marks are distinctive in character and hence capable of being registered as a trademark.
- Secondly, they established how their mark has acquired distinctiveness through the unique innovation of infusing floral fragrance, to be specific, rose scent, into tyres which are manufactured by them. The unique scent when applied to tyres creates a distinct and memorable sensory experience for customers.
- Thirdly, the company has gained substantial international recognition as the first smell mark popularised through various Indian and international publications.

The tribunal passed an order in favour of the applicant on 21st November, 2025. The reasoning by the tribunal is as follows –

1. The **definition of 'mark' as defined in section 2(1)(m) of The Trademarks Act, 1999**, although it does not expressly mention smell marks, is inclusive in nature and not exhaustive. The inclusive definition of the word 'mark' allows for the inclusion of more categories of marks. Hence, registration cannot be refused on this ground. The Trademarks Act, 1999, when compared to the earlier Act of 1958, has undergone two major changes, namely,

- the trademark must be capable of being represented graphically and
- have a distinctive character as laid down under section 2(1) (zb).

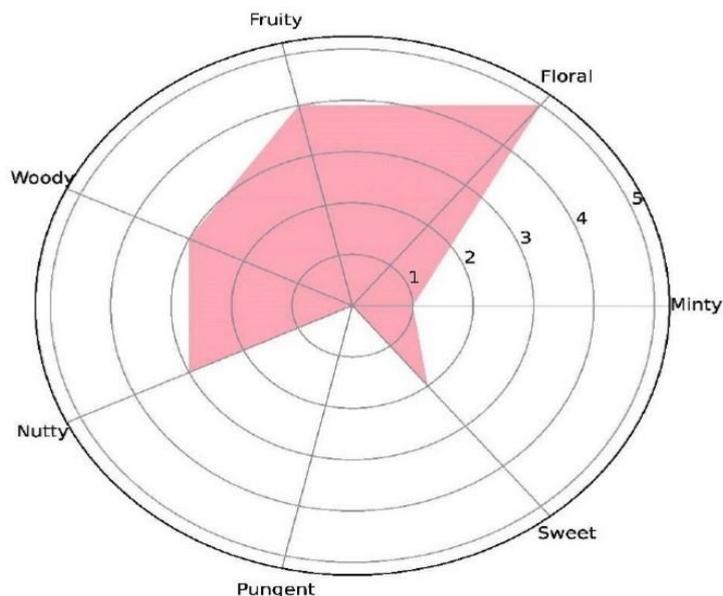
BUT ONE MIGHT THINK, HOW CAN A SMELL BE PRESENTED GRAPHICALLY?

Well, the answer to this question was resolved by Prof. Prithish Varadwaj, Prof. Neetesh Purohit and Dr. Suneet Yadav of Indian Institute of Information Technology, Allahabad on September 13, 2024 who prepared a scientific graphical presentation of rose-like smell as a vector in the 7-dimensional space wherein each dimension is defined as one of the 7 fundamental smells, namely floral, fruity, woody, nutty, pungent, sweet, and minty. The description goes as follows: A complex mixture of volatile organic compounds released by the petals interacts with our olfactory receptors, creating a rose-like smell.

The strongest smell gets activated first, followed by the next relatively lower in strength, and a pungent smell at the end, which lasts the longest.

FLORAL FRAGRANCE/ SMELL REMINISCENT OF ROSES AS APPLIED TO TYRES

Graphical Representation of Rose-like Smell



Description: A complex mixture of volatile organic compounds released by the petals interact with our olfactory receptors, creating a rose-like smell. Using the technology developed at IIIT Allahabad, this rose-like smell is graphically presented above as a vector in the 7-dimensional space wherein each dimension is defined as one of the 7 fundamental smells, namely floral, fruity, woody, nutty, pungent, sweet, and minty.

2. As regards the second aspect of distinctiveness, **WOULD A ROSE FRAGRANCE ON TYRES REALLY HELP CONSUMERS IDENTIFY THEIR COMMERCIAL ORIGIN?**

The tribunal laid down that - when tyres of a vehicle contains scented rose smell, a customer passing by will have no difficulty in associating the smell of roses with goods of the applicant because usually a stark smell of rubber is expected to emanate when standing

near roads or highways. Moreover, the fragrance of roses has no direct relationship with the nature of goods (tyres) of the applicant and hence is arbitrary to such goods. Thus, the applicant's mark is considered distinctive.

Is this the beginning of a broader acceptance of sensory trademarks in India?

The acceptance of olfactory mark for advertisement by the tribunal is not just a milestone but a significant shift in trademark scope, as it broadens the scope of what kinds of mark can meet the statutory requirement for registration. The recognition of an olfactory mark as capable of being represented graphically has opened doors for sensory branding that extends well beyond traditional visual identifiers. It is a fact that non-conventional mark faces challenges in getting registration. One such non-conventional mark is a sound mark, which is recognised by The Trademark Rules, wherein the sound marks are represented graphically through musical notations along with the sound in an MP3 file not more than 30 seconds. This method of representation illustrates how trademark law have evolved to adopt marks that are not purely visual. Hence, this landmark case suggests that the legal framework can evolve to meet the needs of **modern, multi-sensory branding strategies**. The recognition of olfactory marks may encourage trademark owners to explore other non-traditional signifiers, potentially prompting future discussions on whether the Act should be updated or complemented by clearer guidelines on the registration of such marks.

Email ID: sangeetapal634@gmail.com