

# Making a mark out of a tragedy

There has been a marked increase in applications for trademarks closely connected to tragedies and other newsworthy events, but they can't truly function as trademarks, say **Vikrant Rana** and **Ritika Mogha** of S.S. Rana & Co.

**S**ocial media have become an indispensable part of life. A phrase or slogan, often with a hashtag, can create awareness, allow people to share information, and organise action around a particular cause or issue. But popularised terms can also be used in the wrong way. This is highlighted by, for example, the sudden upsurge in the filing of trademarks closely connected to tragedies.

While the world is trying to wrap its head around the MH370 tragedy, some people have already tried to exploit it for their own benefit. On March 8, 2014, Malaysia Airlines flight 370 (MH370) disappeared, leaving no trace of the 239 lives on board, all of whom are presumed to be dead. Five days later, Aoan International filed an application with IP Australia for the trademark 'MH370'. The agency rejected the application on December 12, 2014, saying the mark 'MH370' lacks distinctiveness as the term is in circulation globally and is scandalous.

The Indian Trade Marks Registry is no stranger to receiving trademark applications related to tragedies. Eros International Media, an Indian motion picture production and distribution company, also applied for 'MH370'.

The Indian registry has received numerous other applications that make a mockery of national tragedies. Some of these are illustrated in the table opposite.

The table shows that the trademark applications were filed after the date of the tragedies. Most of them are in their initial stage of examination and

“PEOPLE AROUND THE WORLD HAVE WIDELY CRITICISED ENTITIES FOR VIEWING TRAGIC EVENTS AS AN OPPORTUNITY FOR COMMERCIAL EXPLOITATION.”

have their status as either “formality check pass” or “marked for examination” on the Trade Marks Registry’s website.

The registry has raised objections to the registration of such marks, but final decisions are pending. Further, section 9(2)(c) of the Trade Marks Act, 1999 provides that a mark shall not be registered if it comprises or contains scandalous or obscene matter.

The US Patent and Trademark Office (USPTO) has also been receiving similar applications. Some examples of these marks are enlisted below:

- **'MH17'** The mark is related to the tragedy involving Malaysia Airlines Flight 17, which was shot down over Ukraine in July 2014. The USPTO has issued a non-final office action that refuses it on the grounds of failure to

function as a service mark, false association, and being merely descriptive.

- **'I can't breathe'** The application covers the last words spoken by Eric Garner, who died after an incident with the New York police. The USPTO has issued a non-final office action refusing the registration on the grounds of false connection and the mark being an informational slogan.
- **'Je suis Charlie'** The application is for the rally slogan adopted as a message of condolence, outrage and defiance to show support for freedom of expression following the deadly attack on French satirical magazine Charlie Hebdo. It has yet to be examined.

## Public and government response

People around the world have widely criticised entities for viewing tragic events as an opportunity for commercial exploitation. The purported creator of the phrase “Je suis Charlie”, Joachim Roncin, marked his outrage over the attempts to commercially exploit the phrase after more than 50 related trademark applications were filed in France alone.

After wrestling with their responsibility in this respect, the Office for Harmonization in the Internal Market and the National Institute of Industrial Property took a firm stance by releasing notifications that marks falsely indicating a connection to Charlie Hebdo shall be objected to on the ground of public interest and may be refused registration.

Sometimes entities having a direct

connection with the origin of a mark file trademark applications with the intention of preventing third parties from commercially exploiting it. Cricket Australia filed a trademark application for the phrase '63 not out' with IP Australia. The trademark was filed after Australian cricketer Phillip Hughes died after being struck by a bouncer while on 63 runs during a match in November 2014, as a defensive strategy to prevent people from cashing in on and commercially exploiting the tragic incident.

The essential function of a trademark is to exclusively identify the commercial source or origin of goods or services. Trademarks based on tragedies fail to function as trademarks, as the public does not identify such marks/slogans with a single source; instead, people see these phrases as part of something larger than any single person or entity. ■



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Tragedy	Date	App. no.*	Trademark		Application date	Class	Status
<b>Mumbai terror attacks</b> A series of 12 coordinated shootings and bombing attacks, lasting four days, occurred across Mumbai. They were carried out by members of Lashkar-e-Taiba. The attacks killed 164 people and wounded at least 308.	Nov 26 to 29, 2008	1781903	'26/11' logo		Feb 5, 2009	41	Abandoned
		2188017	'26.11 Tactical products' logo		Aug 9, 2011	9	Objected to on the ground of lack of distinctiveness
		2694103	'26.11 Tactical products' logo		Mar 7, 2014	6	Formality check pass
		2694104	'26.11 Tactical products' logo		Mar 7, 2014	35	Formality check pass
		2694105	'26.11 Tactical products' logo		Mar 7, 2014	13	Formality check pass
		2757399	'26.11 Tactical products' logo		Jun 17, 2014	6	Formality check pass
		2757400	'26.11 Tactical products' logo		Jun 17, 2014	9	Formality check pass
		2757401	'26.11 Tactical products' logo"		Jun 17, 2014	13	Formality check pass
		2757402	'26.11 Tactical products' logo		Jun 17, 2014	35	Formality check pass
<b>Nirbhaya rape case</b> A 23-year-old female medical intern was gang raped and beaten by six men in a moving bus in Delhi. Nirbhaya, which means 'fearless' in Hindi, was the pseudonym given by the media to the victim.	Dec 16, 2012	2465868	'Nirbhaya'		Jan 24, 2013	13	Objected to on the ground of lack of distinctiveness
		2602406	'Dr. Nirbhaya' logo		Sep 26, 2013	32	Objected to on the ground of lack of distinctiveness and similarity to mark already on register
		2646859	Nirbhaya Bharat logo		Dec 21, 2013	45	Formality check fail
		2659273	'Nirbhaya squad'		Jan 14, 2014	41	Marked for exam
		2760362	'Nirbhaya'		Jun 23, 2014	9	Formality check pass
		2760364	'Nirbhaya: be fearless'		Jun 23, 2014	9	Formality check pass
		2760366	'Nirbhaya'		Jun 23, 2014	42	Formality check pass
		2760368	'Nirbhaya: be fearless'		Jun 23, 2014	42	Formality check pass

Source: <http://ipindia.nic.in> \*Application