



Tax alert: Draft Trade Marks (1st Amendment) Rules, 2024

12 January 2024

The Ministry of Commerce and Industry has notified the Draft Trade Marks (1st Amendment) Rules on January 10, 2024 (hereinafter referred to as the “**Amendment Rules**”), inviting further suggestions for a period of 30 days.

In a nutshell

Key aspects of the guidelines are as captured below:



- The Draft Amendment Rules provide for the adjudication of certain penalties under the Trade Marks Act, 1999



- The Draft Rules provide for the appointment of an ‘Adjudicating Officer’ who shall hold inquiry and impose penalty for contravention.
- The Draft Rules provide a new Form (TM-D) which can be used to file the complaint online



- The Draft Rules provide the mechanism for preferring an appeal to the Appellate Authority against the decision of the Adjudicating Officer.



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Key highlights:

The Draft Amendment Rules propose to insert a new Chapter titled – ‘Chapter VII A – Adjudication of Certain Penalties Under Jan Vishwas Act’. The Draft Amendment Rules are proposed to be made part of the Trade Marks Rules, 2017. This new chapter provides for the adjudication of penalty under Section 107 of the Trade Marks Act, 1999 (“Act”) which was revised under the Jan Vishwas (Amendment of Provisions) Act, 2023. Section 107 of the Act provides for the penalty for falsely representing a trademark as registered.

The Jan Vishwas (Amendment of Provisions) Act, 2023 has replaced the punishment for contravention of Section 107 from ‘imprisonment for a term which may extend to three years, or with fine, or with both’ to ‘penalty of a sum equal to one half per cent of the total sales or turnover, as the case may be, in business or of the gross receipts in profession, as computed in the audited accounts of such person, or a sum equal to five lakh rupees, whichever is less’.

The Draft Amendment Rules propose to insert the definition of an ‘Adjudicating Officer’, meaning to be an officer appointed in accordance with Section 112A of the Act. Section 112A of the Act was inserted by the Jan Vishwas (Amendment of Provisions) Act, 2023 and provides that the Registrar may authorise an officer to be an ‘Adjudicating Officer’ for holding inquiry and imposing penalty under the provisions of the Act. Rule 105B further expands upon the role of an ‘Adjudicating Officer’ and ascribes it with the power of a civil court, namely:

- (a) Enforcing the attendance of witnesses and compelling the production of documents and material objects; and
- (b) Adjudicating Officer shall be deemed to be a public servant under section 21 of the Indian Penal Code, 1860.

Rule 105C provides that the Adjudicating Officer may quash and dismiss the complaint if s/he is satisfied that a prima facie case for maintainability has not been made out, within a period of thirty days. On the other hand, if the Adjudicating Officer is of the view that a prima facie case for maintainability has been made out, the Adjudicating Officer will commence the proceeding within thirty days under Rule 105D. The Adjudicating Officer shall serve a copy of the notice to the alleged violator. Thereafter, the violator/ opposite party is given an opportunity to file his written submissions. The Rules further provide the manner of holding inquiry and passing appropriate order.

Rule 105E provides for the form and manner in which a person, aggrieved by any decision or an order passed by the Adjudicating Officer, may prefer an appeal to the Appellate Authority who shall be an officer at least one rank above the Adjudicating Officer, within sixty days of receipt of the decision/ order. Rule 105F provides for the Appellate Authority, upon receipt of an appeal, to endorse the date on which it is received and sign such endorsement. Rule 105G provides for the Appellate Authority to dispose of the appeal while recording their reasoning in writing. Rule 105H provides the mechanism that is required to be followed while the appeal procedure is in process.

Key takeaways:

The proposed introduction of an Adjudicating Officer, the process of filing complaints against third parties that falsely represent a mark as registered under specified form to be filed online and an Appellate Authority to consider appeals against the decisions of the Adjudicating Officer, is a further step in ease of doing business.



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