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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJLAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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Description

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ARTIFICIAL INTELLIGENCE AND INTELLECTUAL PROPERTY RIGHTS OF COMPANIES

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Research Paper

Title: Artificial Intelligence and Intellectual Property Rights of Companies – Ownership of AI Generated Logos and Trademarks

Issue: Generally, a company will own the trademark of the logo they have created with the help of an AI. As long as they are using it as their source identifier and have valid rights or ownership of the design, however, if the logo is fully generated by an AI with no real human creativity then the company may not own the copyright.

Abstract

Companies are increasingly using AI to develop brand names, logos, packaging designs, advertisements and more. This can cause confusion as to who actually owns the Intellectual Property Rights. Should it be the company who employed the use of AI, the employee/designer who used the AI tool, the AI platform provider or the AI itself? This paper will look at the legal implications of AI generated logos and how they relate to Trademark ownership. Generally Trademark law does not focus on who actually created the image but rather who is using it in trade. If the logo is distinctive and not confusing then the company can generally register and enforce the logo (created with the help of AI) as a trademark. Copyright can be harder to obtain as it is commonly required to be authored by humans. We suggest that companies put in place clear contracts, ensure there is human creativity involved, carry out trademarks searches and ensure they follow the terms and conditions of the AI platform.

Keywords

Artificial Intelligence, Intellectual Property, Trademark, Logo, Copyright, Ownership, Company, AI Generated Works, Trade Marks, Brand Identity.

Introduction

Many companies use AI to cut down on design costs, generate creative ideas and quickly create logos. Generative AI can be used to create images, symbols, wordmarks, slogans and full visual identities based on text prompts. When a company has created a logo using AI, who owns the trademark?

The short answer is that the AI system cannot own a trademark as it is not a legal person. Normally the company who use and implement the logo will own it, however they will have contracts in place with the designers, employees, freelancers and AI platform providers. The key difference compared to copyright is that Trademark laws are based on who is using the sign to identify the goods/services.

Research Objectives

Explore how AI affects company Intellectual Property Rights.

Identify who owns the AI generated company logo.

Understand the differences between owning a Trademark and Copyright.

Analyse the legal risks of using AI generated logos.

Suggest what actions companies should take to protect their AI created brand.

Research Questions

Can a company register a logo created using AI?

Who owns the AI generated logo?

Can AI own a Trademark/Copyright?

What is the difference between Trademark rights and Copyright for an AI generated logo?

What contractual and process steps should companies take?

The Importance of Intellectual Property to Companies

A company's logo is often one of their most valuable assets. It helps to identify them within the market, differentiate their products/services and build consumer confidence. It can also help with advertising and brand growth.

This can be protected by using various legal methods:

Intellectual Property Right What it protects How it relates to an AI generated logo

Trademark A sign to identify the source of goods/services The company may register the logo

as a Trademark. [uspto][uspto]

Copyright Protection of original works of authorship such as artistic works May have limited protection if it is fully generated by an AI. [copyright][congress]

Contract Rights agreed between parties Determines ownership between the company, designer, freelancer and AI provider. [wipo][news.bloomberglaw]

Trade Secrets Confidential business information May protect prompts, design briefs, brand strategies and internal processes for the AI.

Trademarks and AI Generated Logos

Overview

A trademark is defined as a word, name, symbol, design, logo, colour, sound or any combination thereof that is used to distinguish goods or services provided by one business from another. It is essentially used to denote where a product or service comes from.

Even though the logo was originally generated using AI, if it meets the criteria of being distinctive, being used in trade and there being no likelihood of confusion with any previous trademarks then it can be used as a trademark.

Ownership

In most jurisdictions, the trademark will belong to whoever is using or intends to use it in trade. According to the USPTO in the United States, "When you use a word, symbol, or design to identify the source of your goods or services, you become the owner of a trademark."

If the company asks an employee/agency to create them a logo using AI, and they choose to use that logo for their goods/services, then they will generally be the correct party to apply for the trademark. As the AI is just a tool, as with many design tools, photography tools and graphic design programs.

Example

XYZ Pvt. Ltd. ask their marketing team to create a logo using an AI image generator. They look through the results and choose a few. They change the colours and font and carry out a trademark search before using the logo on their labels, packaging and website.

In this case XYZ Pvt. Ltd. would usually own the trademark as:

The logo is distinctive.

It is being used to identify the source.

There is no conflict with any previous trademarks.

They have ownership or enough rights from the designer and AI platform.

They have applied for the trademark in their name.

Can AI hold a Trademark?

No. AI is not considered to be a natural person or legal person so cannot enter into contracts, use goods/services in trade, bring or defend claims in their own name or register as a trademark owner.

WIPO explain that there are no authors or inventors in trademarks so the impact of AI on trademarks differs to copyright and patents. The key areas that will affect trademarks are whether they can be registered, if they infringe any trademarks, unfair competition and cause consumer confusion.

Under the Trademarks Act, 1999 in India a person claiming to be the proprietor of trademark must apply to register it. A registered proprietor is any person registered as proprietor with the register. This means that only a natural person or legal entity (such as a company) can be the applicant.

Copyright of AI Generated Logos

Unlike trademarks, logos can be protected under copyright if they are considered an original artistic work with a human author. However, completely AI generated material will usually cause significant issues in relation to copyright. Many legal systems require there to be a human author.

In the US the Copyright Office state that generative AI outputs can only be protected if the human author of the output has sufficient amount of expressive elements. Simply providing prompts will not give enough input from a human to be considered the author.

Therefore:

Scenario Likely Trademark Status Likely Copyright Status

Logo is completely AI Generated Logo could be registered as a trademark if it is distinctive and used in trade. Copyright may not be available due to there not being enough human authorship.

Logo designed by designer with only AI used for assistance Logo may be owned by the company due to use. Copyright will depend on the relationship between designer and employer. Human elements may be copyrightable.

Logo has been heavily edited, organised or altered Logo can be used by the company as their trademark. Company may only own copyright to the original parts of the logo.

Logo designed by freelancer using AI for the company Rights depend on the contract. If not assigned to the company the freelancer may have some rights. Copyright will depend on the agreement and applicable law.

Main Legal Issues

AI platforms often include clauses regarding ownership of generated outputs. This varies between different platforms. Some AI platforms may have clauses that retain ownership, limit commercial use or exclude them from liability for infringement. WIPO suggests that companies should ensure there are clear contractual clauses regarding ownership of generative AI outputs. This can be particularly important if the company relies on IP ownership.

A company should not assume that they will have full ownership of AI generated images. They must check the platform's terms and ensure they have clauses giving them assignment or licence rights.

Authorship

This is an important factor in determining copyright ownership. If a company simply provides the prompt "create a modern blue logo for a technology company" then they may not hold copyright over the image. However, if a designer has added original artwork, made creative choices by selecting and arranging various elements and made substantial changes to the output it may be considered that there has been some authorship.

Infringement Risk

AI generated logos may be similar to existing trademarks, famous logos, works of art, characters and other protected materials. Although the logo was created by AI, the company will still be liable for the commercial use of the logo. Therefore, before adopting the logo, the company should conduct a thorough search to see if there are any trademark issues. They should also consider if there are any copyright and design infringement issues.

Distinctiveness and Registrability

A logo must be able to distinguish the company's goods/services. If the logo is generic, descriptive, misleading or too similar to another logo it may be rejected. In India, if the AI generated logo can be depicted graphically, is distinctive and indicates the commercial origin it can be registered.

Use in Commerce

Trademark ownership depends on whether the mark is being, or will be used commercially. In the United States, you must apply for use based trademarks meaning that the mark must be used in the sale/transportation of goods or provision of services in interstate commerce. You

must also provide acceptable examples of how the mark is being used in practice.

Comparative Legal Position

Jurisdiction Trademark Ownership Copyright

United States May be owned by the user/company using the mark commercially. AI cannot be the applicant/owner. Must be authored by a human. Simply providing prompts will not be enough but if there have been changes or arrangements by a human it may be protected.

European Union Must specify who the applicant/owner is. AI cannot be the owner. May be relevant if there has been creative choices made by a human. If the output is entirely machine generated there may be some uncertainty.

India May be owned by the company/person adopting and using the mark. AI cannot be registered as the proprietor. As there is no explicit recognition of non-human authors, there may be uncertainty around works entirely created by AI.

Practical Recommendations for Companies

When using AI, it should be treated as a tool. To minimise the risk of legal issues the following recommendations can be implemented:

Ensure there is a contractual requirement to assign any Intellectual Property rights relating to the finished Logo to the company. This can be done by ensuring that all employees, freelancers, agencies and contractors assign all Intellectual Property in relation to the Logo.

Check the terms and conditions of the AI platform to ensure that you have the necessary rights to use the AI generated Logo commercially and/or own it. If you do not own the Logo you should at least have a licence.

Evidence of human involvement in the Logo. This can be done by retaining the design brief, initial drafts, editing history, brand guidelines, prompts and final artwork.

Ensure you complete a trademark clearance search. This will ensure that you are not infringing any registered or pending trademarks.

Apply the Logo to various aspects of your business such as products, packaging, website, advertising and business documents.

Trademarks should be filed using the company name. Normally you would want to list the company as the applicant and proprietor.

Don’t rely solely on AI. Ensure that humans are making choices, alterations and finalising the Logo.

Ensure you have indemnities. In your contracts with the AI provider/creative agency ensure

that they have liability if the Logo they generate infringes any third party rights.

Conclusion

In most cases, the company will be the rightful Trademark owner as Trademark ownership depends on using and adopting the Logo. An AI system cannot own a Trademark. However, the company must ensure they have valid contractual rights and that the Logo does not infringe previous Trademarks/Copyrights.

The key thing to note is that even though a Logo was created using AI, you may still have Trademark rights. However, if the Logo was completely created using AI and there is no real human involvement then you may not have Copyright. Therefore, it is important to ensure you have evidence of human involvement, written assignments, check the terms and conditions of the AI platform, and register the final Logo using the company name.

Footnotes

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