

Protect Your Brand in India Before a Contract Manufacturer Makes It



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Yes. If an Indian contract manufacturer will put your brand on goods, file your trademark in India, nationally or through Madrid, before you send the artwork. India's Trade Marks Act gives no infringement action for an unregistered mark (section 27), gives the registered owner the exclusive right (section 28), and protects only a prior user who has used the mark continuously from before the owner (section 34). A foreign brand with no Indian sales usually has no Indian use to rely on.

The Short Version

- Section 27(1): nobody can sue for infringement of an unregistered trade mark in India. Passing off survives under section 27(2).
- Section 34 shields an earlier continuous user. It does not hand ownership to the first person who used the mark abroad.
- India is neither purely first to file nor first to use, and for a foreign brand with no Indian sales, filing is the protection.
- Contract makers often run sister companies for competing brands. That is normal, so write exclusivity and a no-filing clause into the contract.
- Run a search on IP India before you file, and watch for anyone advertising your mark. Oppositions have a four-month window from advertisement.

Yes, register your trademark in India before an Indian contract manufacturer puts it on anything. India's Trade Marks Act gives no infringement claim at all for an unregistered mark, and the protection it gives earlier users depends on use in the Indian market, which a foreign brand usually doesn't have. Filing first, nationally or by designating India through the Madrid system, costs far less than arguing later.

Section 27(1) of the Act is one sentence long. "No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark" ([Trade Marks Act 1999, IP India text](#), read 18 October 2026). Read it twice if you're about to email your logo to a factory in India. This post covers what the Act actually says, why it matters more with contract manufacturers, and what to do before you send artwork. The caveat - I've read the statute at source, but trademark disputes turn on facts, so check your own position with a trademark attorney in India.

SourcingFrom Intelligence

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- 01 **Registration gives "the exclusive right to the use of the trade mark"** for the goods it's registered for (section 28(1)), and an unregistered mark gets no infringement action (section 27(1)). ([Trade Marks Act 1999, IP India](#), read 18 October 2026)
- 02 **Much of Indian D2C beauty is made by a few contract manufacturers, "each with 2-3 sister companies so they can claim they are not making for competition".** (*Indian ex-FMCG insider, [r/indianstartups](#), 2025, our forum signal FS-CAT-083*)
- 03 **India's accession to the Madrid Protocol took effect on 8 July 2013**, so a mark you hold at home can be extended to India. ([WIPO Lex](#), read 18 October 2026)

What we don't know yet

- ☐ How often foreign brands find their mark filed in India by a maker or a squatter. We have no case count, so we make no claim about frequency.
- ☐ What exclusivity and IP terms Indian contract makers accept as standard. We plan to ask ten of them.

1. Does India Protect a Brand That Isn't Registered There?

Only through passing off. Section 27(2) keeps "rights of action against any person for passing off goods or services as the goods of another person" ([IP India](#)). Passing off is the older common-law claim, and Indian practitioners read it as needing goodwill among Indian buyers ([Intepat](#), [Lexology](#), practitioner sources). A brand that sells in Melbourne and Manchester and has never sold in India has little goodwill in India to point to.

Compare that with what a registration gives you. Section 28(1) says a valid registration gives the owner "the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered". One is a right you hold. The other is a case you'd have to prove, in India, with evidence you probably don't have.

2. Is India First to File or First to Use?

Neither, cleanly, and the popular "first to file" line is wrong in a way that can mislead you. Section 34 says nothing in the Act lets a registered owner "interfere with or restrain the use by any person" of an identical or similar mark for goods "in relation to which that person ... has continuously used that trade mark from a date prior" to the owner's first use or the owner's registration date, "whichever is the earlier" ([IP India](#), read 18 October 2026).

Read the test closely and three things fall out. The earlier user must have used the mark continuously, not once. It must have started before both the owner's use and the owner's registration, whichever came first. And section 34 is a shield, not a sword. It lets the earlier user carry on, and its last clause says the Registrar "shall not refuse" that user's own application "by reason only" of your registration, so the two marks can end up side by side on the register. Practitioners add that the use has to be in India, and that use abroad doesn't ground a section 34 defence (the sources above). So for a

foreign brand, India works like first to file, with an exception for people already trading in India under the name.

Here's the part that matters with a contract maker, and it's my reading of the text, not a ruling. If the maker or a sister company starts selling goods under your name in India before you register, it is building exactly the continuous Indian use that section 34 protects. Filing before production starts closes that door. Ask a trademark attorney in India how it applies to your facts.

3. Why Does This Matter More With a Contract Manufacturer?

Because the model is built on serving several brands, and that's normal. An ex-FMCG insider described Indian D2C beauty as made by "3–5 different manufacturers (each with 2–3 sister companies so they can claim they are not making for competition)" ([r/indianstartups, 2025](#)). Nothing improper there. It just means your formula, artwork and brand sit in a building that also serves your competitors, so the paper has to say what's yours.

Two more habits from our forum logs make the paper harder to write. The words are loose. In India "private label" often means the maker's formulation under your label, and the terms "private label", "third party" and "custom development" get used interchangeably (an Indian practitioner's account, 2026, our forum signal FS-QMS-018, quoted in full on [private label manufacturing in India](#)). If you bought "private label" in the Indian sense, the formula may be the maker's, and only the name on the pack is yours. That makes the name the one thing you can own outright, which is one more reason to register it. And the company quoting you is often not the one holding the certificates (FS-QMS-019). Do the same check for the brand. Ask which entity will hold your artwork files, print your cartons and make the goods, and name all of them in the contract.

4. When Should I File, and Which Route?

Before the first sample that carries your name, and ideally before the first email with your logo in it. That's the only timing that keeps you ahead of any Indian use by anyone else.

You have two routes, a national application to the Indian Trade Marks Registry or a Madrid designation of India on a mark you already hold at home. The trade-offs, and why an attorney watching the register for you matters, are covered on [private label manufacturing in India](#), so I won't repeat them here.

Whichever route you pick, search first. IP India's website runs a public trade mark search, and five minutes there tells you whether someone already holds your name or something close to it for your goods. File for the goods the maker will actually make, because section 28 protects the mark "in relation to the goods" it's registered for, and a registration for clothing doesn't obviously cover the face cream you add next year.

5. What If the Maker or Someone Else Files First?

Move fast, because the Act sets clocks. Once an application is advertised, "any person may, within four months from the date of the advertisement or re-advertisement" oppose it (section 21(1) as substituted by the [Trade Marks \(Amendment\) Act 2010](#), read 18 October 2026, in force from 8 July 2013 per [WIPO Lex](#)). One trap. The copy of the 1999 Act on IP India's own site still prints the older "three months" wording, so read the amendment alongside it. If you're watching the register, four months is your window. If you only find out after registration, the remedies get slower and more expensive, and that's a conversation for a trademark attorney in India, not a blog post.

Keep evidence from day one either way. Dated emails sending your artwork, the PO with your brand on it, sample approvals and any Indian sales or

listings. They're the facts an attorney will ask for, and they're free to keep.

6. What Else Belongs in the Contract?

The registration protects the name. The contract protects everything around it. Four lines do most of the work, and they're fair to ask of any maker.

1. **No filing.** The maker and its group companies won't apply to register your mark, or anything similar, in India or elsewhere.
2. **Use only for your orders.** Your mark, artwork and files are used only to fill your POs, and never shared with sister companies or other brands without your written consent.
3. **Surplus packaging.** Leftover labels, cartons and tubes are counted and shipped to you or destroyed with a photo record. Packaging minimums often sit above product minimums (FS-QMS-017), so expect surplus. The approval and overage mechanics are on the private label page.
4. **Ownership spelled out.** Say which of the formula, design, artwork and tooling are yours, because "private label" won't say it for you.

The wider contract, including what an Indian NDA can and can't hold, is on [private label manufacturing in India](#), and how the model works in general is on [private label sourcing](#). If you'd like the clauses negotiated and held with the maker for you, [SourcingSync](#) puts exclusivity and IP terms into its order flow for buyers in India.

Questions Buyers Ask

Do I need an Indian trademark if I only manufacture in India and sell abroad? ^

It's strongly advisable. Your goods, artwork and name are in India, and an Indian registration is what lets you act there. Confirm the classes with a trademark

attorney in India.

Does my US, UK or Australian registration protect me in India? 

Is a contract manufacturer with sister companies a red flag? 

Is India first to file? 

7. Back to Section 27

One sentence of the Act decides most of this. An unregistered mark can't be sued on for infringement in India, and a contract maker is the first party in India to hold your name in its hands. That isn't a reason to distrust the maker. It's a reason to make sure that, when it does, the name on the register is already yours.