

# Deconstructing Trademark Infringement: Context, Considerations, and Challenges

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**SUBJECT:** *INTELLECTUAL PROPERTY LAW, TRADEMARK*

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The protection and enforcement of intellectual property (IP) rights is irrefutably vital not only in incentivizing creativity and innovation but also in establishing a free and fair market environment. The enforcement of IP rights is subject to abuse, thus the need to revisit what the Intellectual Property Code of the Philippines seeks to promote and protect.

The Article first examines the nature of IP as a mode of acquiring ownership. It emphasizes that IP should be viewed both as a property and as a right. It also defines and differentiates the concepts of trademark, infringement, and colorable imitation, relating these to jurisprudence and international instruments. Further, it enumerates the different acts that would constitute trademark infringement as provided under the law.

Prosecuting trademark infringement also poses several challenges. The Author explains that courts must exercise caution in exercising provisional remedies with respect to IP rights cases. The courts have to determine whether these remedies will be available depending on the factual and legal issues of the cases. Since the modes of committing trademark infringement in administrative cases, civil cases, or criminal cases are the same, the satisfaction of the quantum of evidence required for each case must be consciously and strictly adhered to.

The Author concludes that decisions of the courts on these cases influence not only the IP environment but also the policy directions of the country. It can also set the sail for possible legislative amendments with the end view of establishing a more robust IP system.