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INDIA: Taj Mahal Palace Hotel Receives Trademark Status

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The Taj Mahal Palace Hotel (pictured right) in Mumbai is a 114-year-old building and iconic flagship of the Indian Hotels Company Limited (IHCL). With its Indo-Saracenic arches and a distinctive red-tiled Florentine gothic dome, the hotel is a defining aspect of the city's skyline. On May 17, 2017, registration for the pictorial representations of the hotel building were secured by IHCL, which referred to these as "image trademarks"—likely the first instance of such rights being granted in India (Reg. No. 3386351). In so doing, the Taj Mahal Palace Hotel joins an elite club of landmarks, such as the Empire State Building and the Sydney Opera House, in securing trademark rights (the Empire State Building design was registered with the USPTO in 2001 and the Sydney Opera House with IP Australia in 2013).



The registration is in Class 43 and covers "services providing food and drink; temporary accommodation." However, since the building is so well recognized, as with any other famous trademark, the registrations should also be useful tools for halting misappropriation for disparate goods and services.

In practical terms, this means that, for instance, when an artist makes a sketch of the hotel building and puts it up for sale, or when event organizers create memorabilia bearing the city's skyline (as is the case of organizers of marathons in Mumbai, for example), these uses may give rise to legal action in the absence of a suitable license agreement with IHCL.

From an enforcement perspective, since the registrations are for "image marks," and not shape or 3D marks, it can be argued that the statutory rights are restricted to the images alone and do not extend to 3D renderings of the hotel building. So, are third parties enjoined from building similar structures/buildings? The full scope of rights will only emerge should such a dispute arise.

Also, in India, "works of architecture" that bear an artistic character qualify for copyright protection, subject to several fair use exceptions, including private use and reportage of current events. For architectural works permanently situated in a public place, the exceptions extend to the making or publishing of a painting, drawing,

or photograph of the work, as well as its inclusion in a cinematograph film. The Taj Mahal Palace Hotel is too old to claim copyright protection, but for famous buildings of more recent vintage, comparing the two forms of protection may lead some to argue that trademark rights are too expansive. The registrations, then, mark an interesting beginning.

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