

Legal Opinion for Trademark Clearance

The Mark '**Lutterman**' is not registered as a trademark in the Indian IP database and if it is desired it can be registered. The goods to be sold under this mark is sports equipment alone and therefore would be registered under Class no.28 in the Nice Classification System.

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Class selection:

The nature of products sold under the proposed mark 'Lutterman' are sports equipment. Under the Nice Classification system that is followed in India, it would fall under Class no. 28 contains all "Games, toys and playthings; video game apparatus; gymnastic and sporting articles; decorations for Christmas trees."

The following goods are also classified under Class 28:

- Amusement and game apparatus adapted for use with an external display screen or monitor;
- Fishing tackle;
- Equipment for various sports and games.

The following goods must NOT be classified under Class 28:

- Christmas tree candles;
- Diving equipment;
- Electrical lamps (garlands) for Christmas trees;
- Fishing nets;
- Clothing for gymnastics and sports;¹

In future if there is a plan to extend the business and include services with regards to sports, activities like coaching or place for training like providing golf facilities or gymnastic instruction or health club services [health and fitness training] and especially if there are plans to provide games equipment rental, then the mark would be required to be registered under class no. 41 as well. Class No.41 pertains to "education; providing of training; entertainment; sporting and cultural activities."

Alternative Meanings:

The mark 'Lutterman' is not an English word, but it is a known surname in America since 1920.² The French dictionary defines 'Lutterman' as a wrestler. There is no mark registered by the word 'wrestler' in India as well.

Similarity of Goods and an analysis of the relevant Marks:

As it can be derived from the Search report that there is no similar or identical mark registered in India however there are a few marks which are to be considered and reviewed before filing the

¹ www.indiafilings.com

² <https://www.ancestry.com/name-origin?surname=lutterman>

application. The similar products sold under the listed marks have been underlined for reference in the search report.

One mark which we find that it should be thoroughly reviewed, is “Lettermen Sports.” It is registered under the Federal Laws of America. Sports clothing are sold at retail under this mark, as well as “athletic sporting goods namely hockey equipment” is also sold by them as per the USPTO website and it is LIVE as of the date 11.8.2020. Any sport equipment would fall under the class 28 and hence it might seem similar. But the principal question that whether it would create confusion in the mind of a prudent consumer, the answer would be negative. It is very unlikely that there would be any confusion among the consumers as “Lutterman” is not an English word on the other hand “Lettermen” is, and the meaning of the later would be clearly distinct to the consumers in India and people speaking in English. The potential risk of litigation against the new applicant is very low.

Another similar case is regarding the mark “Lutter” registered in Ukraine. Sports clothing, footwear, suits are sold under this mark. As per the nice classification system, sports clothing and footwear belong to Class no. 25 while the desired mark ‘Lutterman’ for sports equipment would have to be registered under class no.28 which deals with sports equipment, and it specifically excludes sports garments.

The mark “Laut German Gear” is phonetically similar to the desired mark ‘Lutterman.’ It is registered in Germany. As per the WIPO website the goods and services provided under this mark includes bags for campers, for climbers, as well as hunting accessories. These goods slightly divulge into the arena of sports equipment falling under class 28. But it is majorly a seller of all sorts of clothing while the vision for ‘Lutterman’ is specifically to sell sports equipment.

The other marks that are Lutheran Lounge, Lutheran Health Network, L'AUTREMENT DIT are registered outside India. One provides the service of podcasts, one provides medical services and one provides school and office supplies, respectively. These goods and services provided by them are evidently distinct from that of goods to be sold under the desired mark ‘Lutterman’

Common caveats:

- However, it would still involve a minimal potential risk, an application has to be made as soon as possible as the search report was last updated on 11th of August, 2020 as it is open for anyone to apply it in the meantime
- The search report made is based upon online websites that are accessible free of cost, there always remains the possibility that it might not be full proof, as the original register is not referred to but the probability of that happening is extremely low
- The analysis of trademarks is subjective, the mindset of the general prudent consumers is assumed for the purpose of the analysis.
- Since the desired mark is not defined in the English Dictionary, its meaning could be interpreted differently.

Registrability:

The mark 'Lutterman' can be registered under Class 28 to sell 'sport equipment.' However, Sports garments cannot be sold under this class, nor can equipment be rented, or any sort of training or coaching could be provided. If in the future it is desired to provide such services then the mark would have to be registered again under the applicable classes.

As it has been provided in the Search report the application for registration could be submitted either offline by approaching the Trademark office located at the Metropolitan cities considering their jurisdiction, however, it is advised that in the times of this Pandemic the process be conducted online, it would be safer and cheaper by going to www.IPIndia.nic.in

Essential Factors that are to be considered; the application of a mark could be refused under these grounds:

- ✓ This mark has no direct relation to the goods sold under it.
- ✓ The most important element behind the mark is that it is a Surname commonly found in USA.
- ✓ This mark is a foreign term that translates to a descriptive or generic term

Suggestions:

The Mark contains a high amount of risk considering that it is a foreign word its meaning could be a constant conflict. It is a common surname in the United States making it prone to legal infringement. For the purpose of opening a new business it would be heavily risky to open the doors to litigation, it would turn out to be more expensive than what we can assume at this point of time.

However, the mark 'Lutterman' could be joined with a logo which would depict its nature that is sports equipment, together it would reduce the similarity index and it would turn to be a strong mark which would receive a reasonable protection under the Trademark Law.

*the format of this document is sized to fit a legal paper if you desire to print a hard copy at home, it is advised that you change the page size to A4. Or if you walk in to our office a legal copy would be handed to you.

**For any help with regards to application for Trademark registration please contact us at +91-7908434522 or alternatively write to us at IPresearchstudent@gmail.com

Sincerely,

IP- research student

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11.8.20