

EFFECTS OF REGISTRATION, PASSING OFF & INFRINGEMENT

@ Karwa Amol

Effect Of Registration, Infringement and Passing Off of Trade Mark

- Effect of Registration of TM
- Infringement of Registered TM
- Passing Off of the registered and unregistered TM
- Infringement and Passing off by Deceptive similarity
- Suit for Infringement
- Persons Liable to be sued
- Defenses available in an infringement action

Effects of Registration



Effects of
Registration

Effects of Non
Registration

Registration of a trade mark is not compulsory

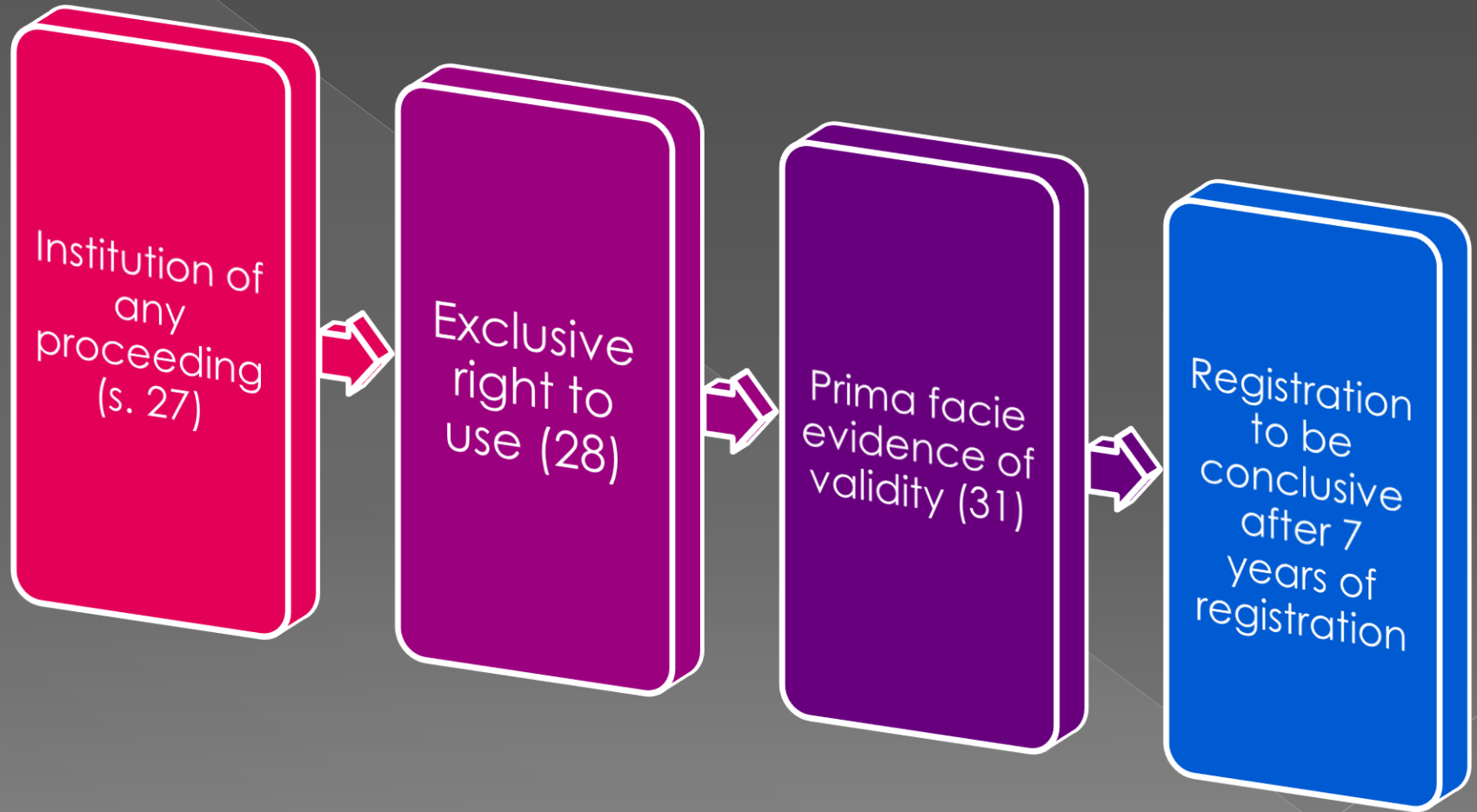
Proprietor by Use or registration

Registration does not confer new right

It only gives statutory recognition

Mere registration in itself does not prevent a prior user

Benefits of Registration



Rights conferred by registration

Exclusive right to use

*Right to
assign*

Relief

Apply for
correction

Essentials of Infringement

Using a TM
by others

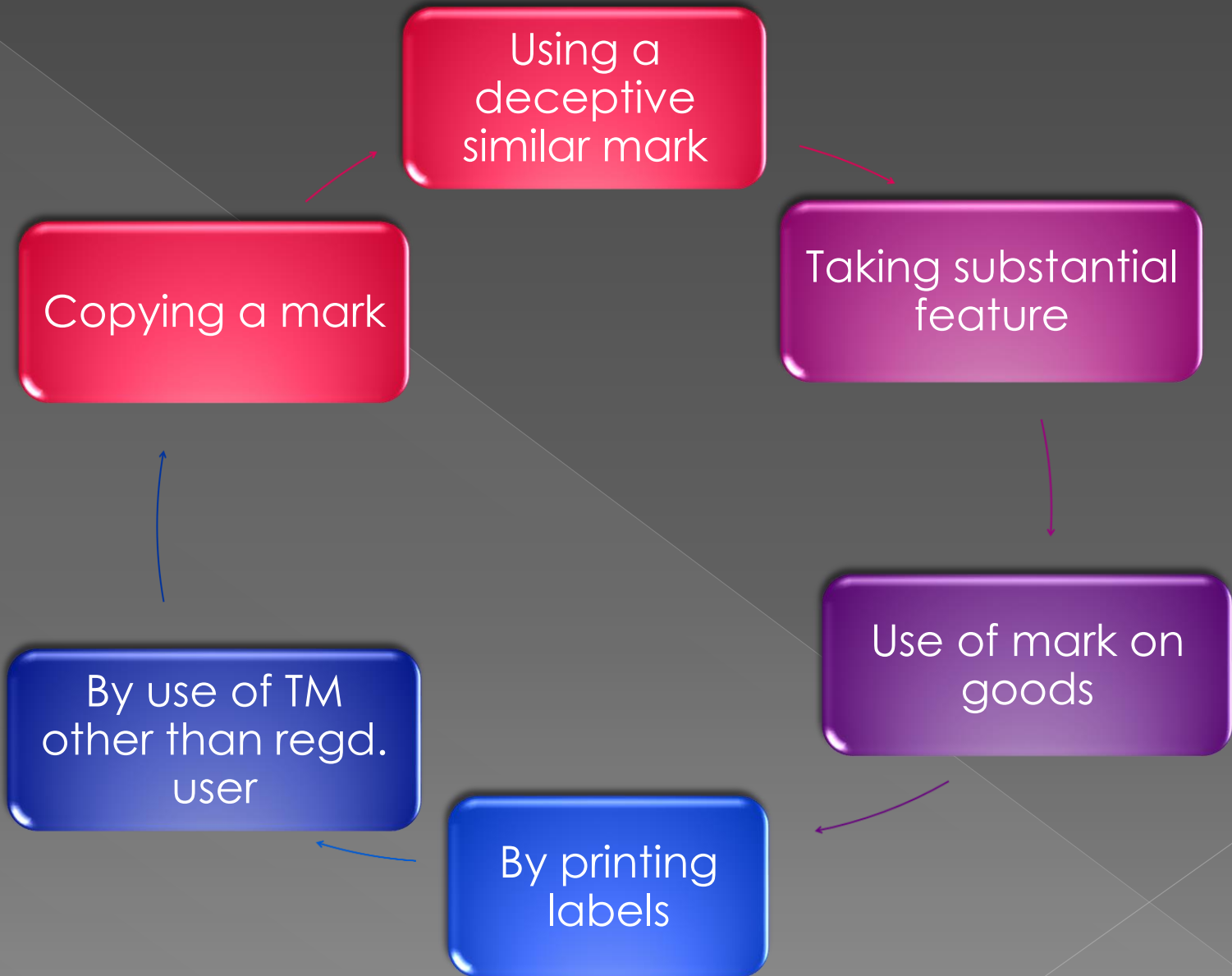
Using whole
or adopted
TM

Use in
regular
trade

Identical or
similar

Likelihood of
causing
confusion

Different forms of infringement



Defenses against Infringement

No Prevention of use

- Honest Practices
- Not to take unfair advantage

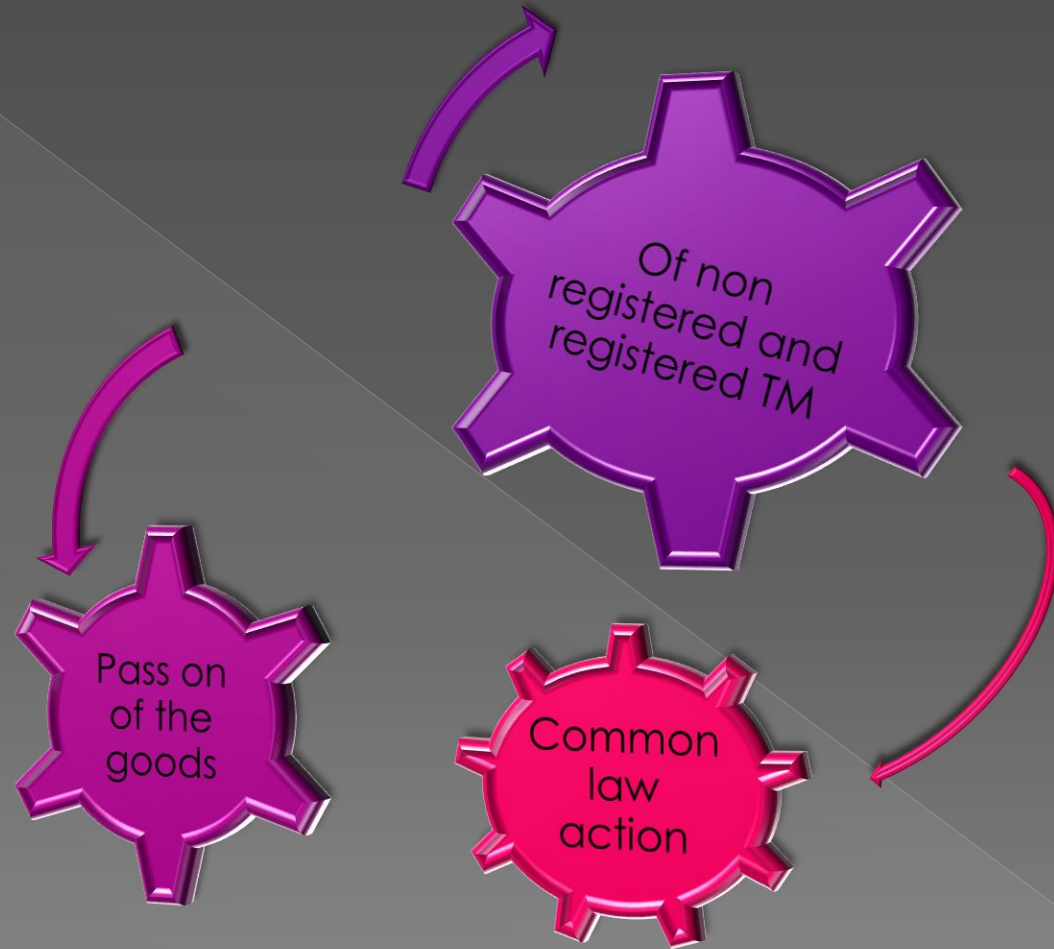
It is not infringement

- Laudatory words
- Conditional registration
- Permitted use

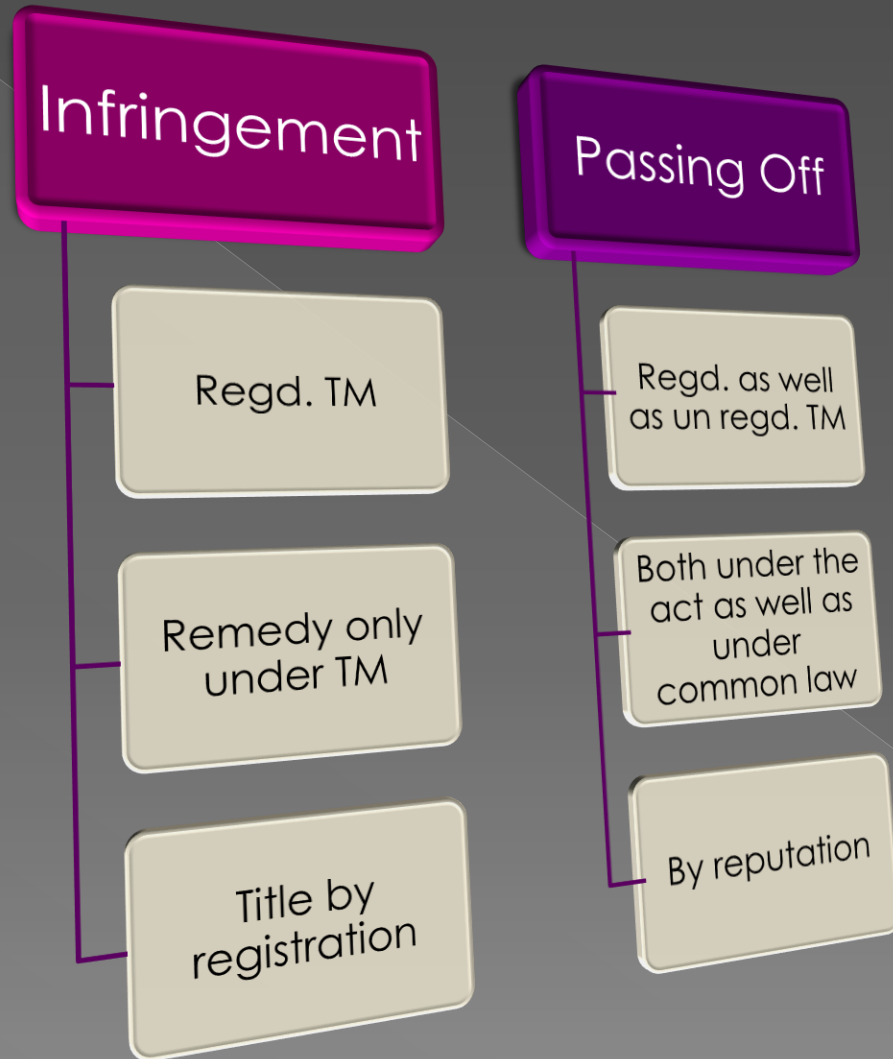
Registered Trade Mark

- Assignment
- Consent

Passing Off



Difference Between Infringement and Passing Off



Passing Off under English Law

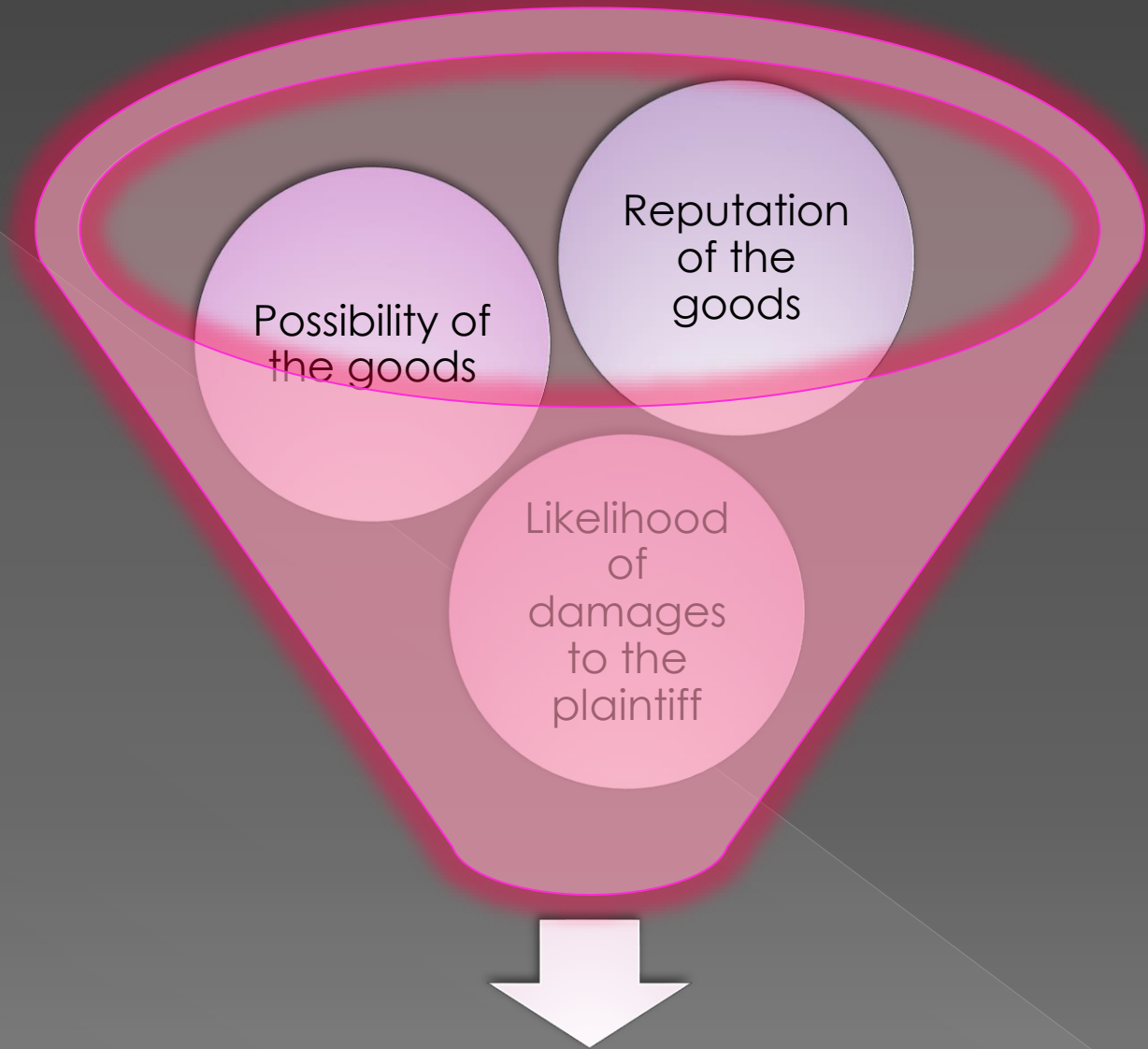
Misrepresentation

Made by a trader

To prospective customers

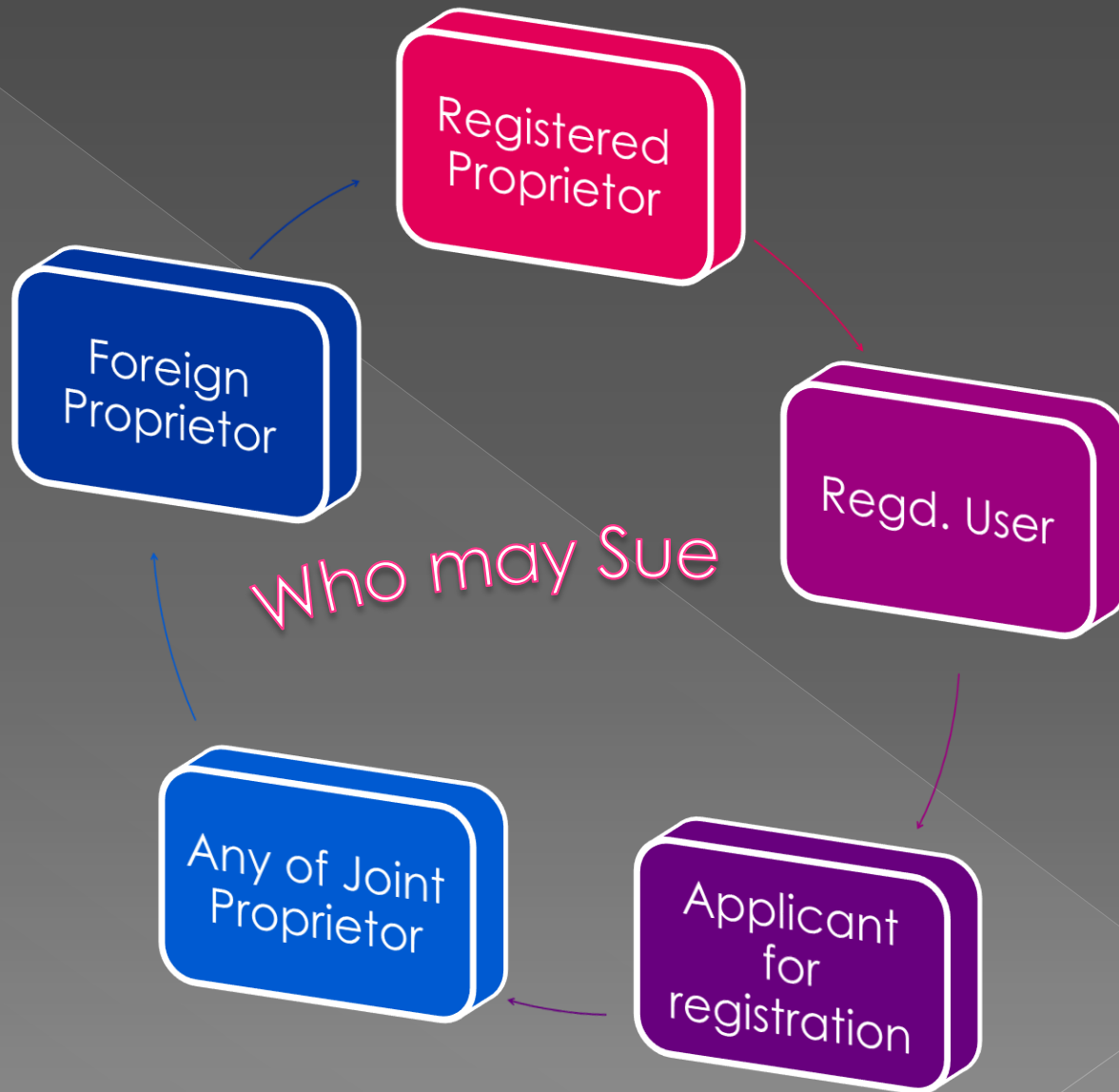
To injure the goodwill

Which cause damages



Passing off In India

Suits for infringement



PERSONS LIABLE TO BE SUED



A master for
Servants acts

The agent of
Infringer

The director
or promoter