IN THE COURT OF SH. LOKESH KUMAR SHARMA
DISTRICT JUDGE (COMMERCIAL COURTS)-02,
CENTRAL DISTRICT, TIS HAZARI COURTS, DELHI

In the matter of
CS (COMM) 918/20
CNR No. DLCT010039192020

The Indian Wood Products Co. Ltd.
Having office at:
9, Brabourne Road, 7th Floor,
Kolkata, West Bengal- 700001

Also at:
284/85, Katra Pedan,
Tilak Bazar, Khari Baoli,
New Delhi- 110006 **….. Plaintiff**

Versus

M/s Unique Wood Products
Having office at:
252-1/B, Katra Pedan,
Tilak Bazaar, New Delhi- 110006 **….. Defendant**

Institution of the Suit : 08.06.2020
Arguments concluded on : 05.09.2026
Judgment pronounced on : 19.09.2026

J U D G E M E N T

1. This suit u/s 134 & 135 of the Trade Marks Act, 1999, & Section 51 & 55 of Copyright Act, 1957 for permanent injunction has been filed by the plaintiff for restraining the infringement of trade mark, delivery up, passing off, damages and rendition of accounts, etc. against the defendant.

2. Brief facts:- As per plaintiff, who was claiming itself to be a Public Limited Company duly incorporated on 23.12.1919, under the Indian Companies Act, 1913, having its registered office at 9, Brabourne Road, 7th Floor, Kolkata, West Bengal- 700001 and having its CIN No. L20101WB1919PLC003557, and Sh. Rajiv Mundhra, Vice President (Marketing) of Plaintiff Company was stated to have been duly authorized, to sign and verify the pleadings, depose the facts of the case and to do all necessary acts on behalf of the Plaintiff, vide Board Resolution dated 28.04.2018, and Sh. Bharat Mohta, being the whole time Director of the Plaintiff company, was also stated to be competent to institute and prosecute the present suit on behalf of the plaintiff, as he was fully aware of the facts and circumstances of the present case.

Plaintiff was stated to be engaged in the business of manufacturing, producing, processing, selling, marketing, promoting and trading of Katha (a dried substance crystallized from the aqueous extract of acacia catechu), kachu (mixture of "katha" and "cutch", a dried aqueous extract prepared from the heart-wood of acacia catechu), Catechins and different varieties of Spices, both basic and blended.

Mr. H.N. Gladstone, Mr. H. Bateson, Mr. E.H. Bbray of London and others were stated to have promoted the Plaintiff's company in 1919 at Izatnagar, Bareilly (UP), India for manufacturing Katha and Cutch and since 1920, Plaintiff had started its manufacturing activities and its Board of Directors had appointed M/s. Gillianders Arbuthnot & Co. Ltd., as its

Managing Agent, to look after the daily activities of the Plaintiff Company; in 1963, Ministry of Commerce and Industry had granted it an Industrial Licence and after abolition of Managing Agency System by the Companies Act, M/s Gillanders Arbuthnot & Co. Ltd. had ceased to act as its Managing Agent; in 1980, the present management had acquired the controlling interest in the Plaintiff Company by acquisition of its shares.

Mr. K.K. Mohta, Chairman and Mr. Bharat Mohta, CEO were stated to be deputed at the Registered Office of the Plaintiff and were controlling the entire operations of the Plaintiff Company, whereas Mr. K. K. Damani, Executive Director was stated to be supervising and controlling the entire operations and productions, however, the total supervision and strict control of the Plaintiff rested with the Board of Directors.

It was stated that Plaintiff Company had entered into an exclusive manufacturing agreement with Nanhe Mal Agro (India) Limited in Daman (Union Territory) in 2015, to meet the increasing demand for Katha and in 2016, Plaintiff had also taken a katha manufacturing plant in Baroda on a 10 year lease agreement and to increase its market share in Premium Katha Segment, the Plaintiff had established a green field plant at Jammu, which became operational in July, 2019.

Plaintiff was stated to have adopted the trademark

"IWP" (Indian Wood Products) and device/label  in 1942, and since then, it had been continuously using the same in relation to its goods and business and had built up a worldwide goodwill and reputation thereunder and had also acquired proprietary rights therein.

It was stated further that over the years, Plaintiff had created & conceived various artistic stylized variations of its device/label, and since 1994, it had also started using distinctive trade dress/artistic works/packaging bearing its Trademark "IWP" which were reproduced here as under:











It was stated that the word mark IWP, label as well as the artistic features and labels, individually and conjointly formed the essential and distinguishing feature of Plaintiff's packaging/trade dress, comprising a distinctive yellow background with diagonal golden stripes on the sides of the packaging, device of pot with stick, surrounded by small cubes of Katha with mark IWP embossed thereupon, spread over a bed of leaves etc.

Plaintiff was also stated to have duly registered its IWP trademark/ label/ trade dress under the Trade Marks Act, 1999 and had also filed various applications for its trademark registrations:

S. No.	Trade Mark	Application No.	Class	Goods	Status
1.		770112	01	Cutch (vegetable products used as tanning agents).	Registered
2.		770111	30	Katha (Edible extract used in the preparations of PAN)	Registered
3.	IWP (word mark)	4024522	31	Katha (catechu) included in Class 31	Registered
4.		3670794	30	Spices	Registered
5.	IWP (word mark)	1436441	35	Advertising, Distribution, marketing wholesale & retail services in relation to cutch (vegetable products used as tanning agents) including katha (edible extract used in the preparation of PAN).	Registered
6.	IWP (word mark)	1550069	39	Packaging of cutch (vegetable products used as tanning agents) including Kathas (edible extract used in the preparation of PAN)	Registered

Plaintiff was stated to have obtained the requisite NOC from the Trade Mark Registry for its packaging 

vide Diary No. 20699/2019-CO/A dated 08.12.2019 and for its logo 

vide Diary No. 853/2000-COA before the copyright office after obtaining requisite NOC from the Trade Marks Registry.

Plaintiff was stated to have adopted and continuously started using its aforesaid trademark/trade dress in relation to its goods and business and had built up a great reputation and enviable goodwill thereunder and had acquired proprietary rights therein.

It was stated that the artwork involved in plaintiff's aforesaid trademark/trade dress/label was original artistic work within the meaning of Indian Copyrights Act, 1957 and plaintiff had been using the said art works/copyright in the course of trade in relation to its goods and business amongst other things, within the meaning of Section 14 of the Copyrights Act

Plaintiff was stated to have exported and sold its goods in various countries across the globe including USA, Brazil, Russia, Netherlands, Latvia, Turkey, Morocco, UAE, Nepal etc.

Plaintiff was stated to have been using the latest state of art technology and had also owned laboratory and proven processing technology, in which, it was using high quality raw materials and the entire process was controlled and monitored by its technically qualified staff.

It was stated that Plaintiff's interactive domain name https://www.iwpkatha.com had contained the extensive information about its goods and business under its trademark.

It was stated further that plaintiff had continuously promoted its trademark/trade dress/lables and business through extensive advertisements, publicities, promotions and marketing and had also been selling, displaying, advertising soliciting its goods on third party websites such as IndiaMart etc.

It was stated further that plaintiff's said trademark/trade dress/label had become distinctive and acquired secondary significance with the plaintiff's said goods and business. Plaintiff was stated to have built up a globally valuable trade under its trademark/trade dress/label and had conducted handsome business there and had acquired immense goodwill and reputation under the aforesaid trademark.

Plaintiff's trademark/trade dress was also stated to be well known trademark/trade dress within the meaning of Section 2(1)(zg) of the Trademark Act, 1999.

Defendant was stated to be a partnership firm consisting of Sh. Anubhav Narang, Sh. Vikas Jhamb, Sh. Vishal Narang, Ms. Usha Jhamb, Sh. Porminder Narang and Ms. Neera Narang as its partners, having its office at 252-1/B, Katra Pedan, Tilak Bazaar, New Delhi- 110006, and was also engaged in the business as that of the Plaintiff i.e. manufacturing, soliciting, trading, promoting and selling of Katha, Cutch and other allied/related goods, however, Plaintiff was not aware about the exact constitution of Defendant or its nexus with its partners.

Defendant was also stated to have adopted and had started using the identical/deceptively similar word/trademark i.e. "UWP', Label 

and trade dress titled as "UWP KATHA PFS 

with deceptively similar colour combination, shape, packaging and artwork as that of the Plaintiff.

It was stated that the impugned trademark/ trade dress/label adopted and being used by the defendant in relation to its impugned goods and business was identical with and deceptively similar to the Plaintiff's said trademark/ trade

dress/label in each and every respect including phonetically, visually, structurally, conceptually in its basic idea and in its essential features.

Comparative chart of both the trade dress was reproduced here as under:

Plaintiff's Trademark/label/trade dress	**Defendant's Trademark/Label/Trade Dress**
IWP	**UWP**
	
	

Defendant's trade dress was identical and substantial reproduction of the Plaintiff's trade dress and some of the points of similarities were as follows:

a) Similar word mark i.e. IWP Katha 4 R'S' and UWP Katha PFS;

b) Presence of similar IWP and UWP labels within a red circle;

(c) Yellow Background with diagonal golden strips on left top and right bottom side of the competing packagings;

d) Device of Pot with stick at identical positions,

e) Spots of liquid katha (paste) on the Pot at identical positions;

f) Device of 6 (six) small square cubes of katha with embossing of IWP and UWP on respective packagings;

g) The device of Pot with stick along with device of square cubes of Katha spread on a bed of 2 (two)leaves;

h) The outer side panels of the competing packagings have white background and multiple devices of 'UWP within a red circle' as against 'IWP within the red circle'.

Plaintiff was stated to have come to know about the impugned goods of the Defendant bearing the impugned trademark/trade dress/label in the last week of June, 2018 sold by it in the market and thereafter Plaintiff had conducted a search in the records of the TradeMarks Registry and had found that

Defendant's trademark 

was registered vide application no. 1369763 in Class 31 dated 08.07.2005, in

relation to Katha (Catechu), claiming user since 01.04.2002, however, Plaintiff had vehemently denied the user of the Defendant as claimed and had also filed a cancellation Petition against the aforesaid registration on the form TM-O under no. 265571 on 11.12.2018 and Trade Marks Registry had also issued notice to the Defendant of the Cancellation petition of the Plaintiff on 25.07.2019, however, till the date of filing of the present suit, defendant had not filed its reply. In the 2nd week of March 2020, Plaintiff was also stated to have come to know that Defendant, besides selling its impugned goods under the impugned trademark/ tabel/trade dress, directly to consumers and traders at large from its premises as mentioned in the memo of parties, was also supplying the same in large quantities to various other dealers/distributors/retailers/jewelers in the markets of Central Delhi viz. Karol Bagh, Tank Road, Kashmiri Gate, Sadar Bazar, Mori Gate, Lahori Gate etc.

It was stated that Defendant had adopted and started using the impugned trademark/trade dress/label in relation to its impugned goods and business without the plaintiff's permission, thereby using and adopting the impugned trade mark/trade dress/label of the Plaintiff and was also violating the Plaintiff's trade rights, passing off and enabling others to pass off their impugned goods and business as that of the Plaintiff as well as diluting the Plaintiff's proprietary rights therein and defendant was also stated to have derived the benefits from the goodwill and reputation of the plaintiff.

It was averred further that defendant had adopted and started using the impugned trademark/trade dress/label with a motive to take advantage of Plaintiff's goodwill and reputation as well as with a motive to deceive and mislead the public at large, as buyers believed that those products were of the Plaintiff due to which Plaintiff had suffered significant losses and injury in its business, goodwill and reputation.

It was also stated that the loss of money or injury sustained or likely to be sustained by the Plaintiff due to erroneous actions and conduct of defendant could not have been calculated in terms of money.

3. The cause of action was stated to have arisen firstly in the last week of June, 2018, when plaintiff had come to know about the impugned goods of the Defendant bearing the impugned trademark/trade dress and had again arisen when Plaintiff's search in the records of the Trade Marks Registry revealed that Defendant's application bearing no. 1369763 in Class 31 dated 08.07.2005, was registered for its impugned mark in relation to KATHA (Catechu) claiming user since 01.04.2002. Cause of action had again arisen when Plaintiff had filed a Cancellation Petition against the aforesaid registration on the form TM-O under no. 265571 on 11.12.2018 and had again arisen when the Trade Marks Registry had issued notice to the Defendant on the Cancellation petition of the Plaintiff on 25.07.2019 and had also informed the Defendant to file its Counter Statement within 2 two months from the receipt of the notice and cause of action had arisen further when Defendant had

failed to file its counter statement to the aforesaid Cancellation Petition of the Plaintiff. Cause of action had again arisen when Plaintiff came to know that the Defendant was selling its impugned goods under the impugned UWP trademark/ label/ trade dress in the markets of Central Delhi and had again arisen when Plaintiff came to know that apart from selling directly to consumers and traders at large from its premises, Defendant had also supplied the impugned goods in large quantities to various other dealers/distributors/retailers in the markets of Central Delhi viz. Karol Bagh, Tank Road, Kashmiri Gate, Sadar Bazar, Mori Gate, Lahori Gate etc. and the cause of action was stated to be still continuing and subsisting in favor of the Plaintiff and against the Defendant.

4. Since the defendant was carrying on its impugned business activities from its sales office situated at 252- 1/B, Katra Pedan, Tilak Bazaar, New Delhi- 110006, Delhi, which had fallen within the territorial jurisdiction of this Court and since its impugned goods were available in the market of the Central Delhi viz. Karol Bagh, Tank Road, Kashmiri Gate, Sadar Bazar, Mori Gate, Lahori Gate etc. which were situated within the jurisdiction of this Court, hence this court was stated to have territorial jurisdiction to try and decide the present *lis* by virtue of Section 134(2) of the Trade Marks act, 1999.

5. In the light of the aforesaid facts and circumstances, the plaintiff had prayed for passing off a decree in its favour and against the defendant detailed as hereunder:-

(a) A decree of permanent injunction restraining the defendant by itself as also through its individual proprietors/partners, agents, representatives, distributors, assigns, heirs, successors, stockists and all others acting for and on its behalf from using, selling, soliciting, manufacturing, marketing, importing, exporting, displaying, advertising, or by any other mode or manner dealing in or using the impugned trademark **UWP,** device/label 

and the trade dress/artistic work/packaging/colour combination**,** 

in relation to its impugned goods and related goods under the Plaintiff's said trademark and related/allied goods or any other trademark/ label/trade dress/ artistic work/ packaging/ colour combination which might be identical with and/or deceptively similar to the plaintiff's trademark **IWP,** label 

and the trade dress/ artistic work/packaging/ colour combination 

and from

doing any other acts or deeds amounting to or likely to:-

i. Infringement of plaintiff's aforesaid registered trademarks
ii. Infringement of plaintiff's copyrights in its aforesaid label/trade dress/packaging/ colour combination/artistic work and violation of its common law rights therein.
iii. Violating the Plaintiff's common law rights in the Plaintiff's said **IWP** trademark/label/ trade dress, including by way of dilution.
iv. Passing off and enabling others to pass off their goods and business as that of the Plaintiff's.

(b) Restraining the defendant from disposing off or dealing with its assets including its premises at the addresses mentioned in the Memo of Parties and its stocks-in- trade or any other assets as may be brought to the notice of the Court during the course of the proceedings.

(c) For an order for delivery up of all the impugned finished and unfinished goods and materials bearing the impugned trade mark/ label/ trade dress or any other trademark/ label/ trade dress which might be identical with or deceptively similar to the plaintiff's said trade mark/ label/ trade dress including its blocks, labels, display

boards, sign boards, trade literatures and goods etc. to the plaintiff for the purposes of destruction and erasure.

(d) For an order for rendition of accounts of profits earned by the defendant by its impugned illegal trade activities and a decree for the amount so found in favour of the plaintiff on such rendition of accounts.

(e) for the decree of grant of damages to the tune of Rs. 50,00,000/-.

(f) for an order for cost of proceedings.

6. Upon service of summons upon it, the defendant had duly appeared to contest the case of plaintiff on its merits and filed its written statement on record, wherein it had taken a preliminary objection that plaintiff was guilty of concealment of material facts as well as for not approaching the court with clean hands.

On merits, it was stated that although Plaintiff had claimed the use of trademark “IWP” since 1942, however, it had not placed on record any document/invoice to substantiate its claim and as per record of the trademark website, the plaintiff had filed its first trademark application bearing no. 1323 for the registration of the Trademark/Device I.W.P. in Class-1 claiming user as "proposed to be used" on 26.06.1942 and another

trademark application bearing no. 164386 for the registration of the trademark/device IP in Class-31 claiming user as "proposed to be used" on 04.06.1954, which indicated that till 04.06.1954, the plaintiff had not used the said trademarks, hence, it was clear that the plaintiff had claimed false user in its plaint

In 1992, Mr. Porminder Narang along with Mr. Kamaljeet Jhamb and Mr. Vishal Luthra were stated to have started the business of producing Kuchch (Cutch) under the trade name Unique Wood Products and accordingly a partnership deed was executed on 01.04.1996; on 01.04.2002, the said partnership firm had bonafidely adopted the trademark UWP, which was the abbreviation of Unique Wood Products and on 08.07.2005, Defendant had also applied for the registration of the Trademark/Device UWP, KATHA PFS, LABEL in Class-31 claiming user since 01.04.2002, which was duly registered under the trademark certificate bearing no. 641325 dated 12.06.2007.

It was stated that since 1992 and 2002, Defendant had been continuously, extensively and openly using the trademark/trade name Unique Wood Products & UWP and this was stated to be well within the knowledge of Plaintiff.

It was further stated that the Defendant's trademark **UWP** was not visually and structurally similar to the trade mark/label of the Plaintiff.

Apart from this, except for the paras which were either specifically admitted or essentially or purely constituted a

matter of record, rest others were denied by him as wrong and incorrect.

7. To this written statement of the defendant, plaintiff had also filed its replication, wherein all the preliminary objections taken by the defendant were denied by it and the contents of plaint were reiterated on merits.

8. On the pleadings of the parties, Ld. Predecessor of this court vide her order dated 26.04.2023, had framed the following issues for determination:

> *1. Whether plaintiff has concealed the fact that defendant has been using trademark/trade name 'Unique Wood Products' and 'UWP' in relations to its goods and business since the year 1992 and 2002? (OPD)*
> *2) Whether defendant's trademark 'UWP' is visually and structurally dissimilar to the trademark/label of plaintiff? (OPD)*
> *3) Whether the suit of plaintiff is liable to be dismissed on account of mis-joinder of necessary parties? (OPD)*
> *4) Whether the plaintiff is entitled to decree for permanent injunction as prayed for in prayer clause (I) of the plaint? (OPP)*
> *5) Whether the plaintiff is entitled to delivery up of all the impugned finished and unfinished goods and material bearing the impugned trade mark as*

prayed for in prayer clause (III) of the plaint (OPP)

6) Whether the plaintiff is entitled to decree for rendition of accounts of profits earned by the defendant by infringing its trademark/ label/trade dress, as prayed for? (OPP)

7) Whether the plaintiff is entitled to decree for damages to the tune of Rs.50,00,000/- from the defendant, as prayed for? (OPP)

8) Who is entitled to the costs, against whom and in what quantum? Onus on parties.

9) Relief.

And had also framed additional issues vide his order dated 05.05.2026 for determination:

1. Whether the trademarks and trade dress of the plaintiff (IWP) and trademarks and trade dress of defendant (UWP) are deceptively similar to each other, if so, its effect?OPP

2. Whether the plaintiff is entitled for decree of permanent injunction as prayed for?OPP

3. Whether the plaintiff is entitled for order of delivery up of the impugned goods /materials under the trademark and trade dress of the defendant deceptively to that of plaintiff? OPP

4. Whether the plaintiff is entitled for decree of rendition of account or in the alternative decree

of damages to the tune of Rs. 50 lakhs as prayed for? OPP

5. Whether the suit of the plaintiff is liable to be dismissed for concealment of material facts and misleading statements in the plaint? OPD

6. Relief.

9. In order to prove its case by preponderance of probabilities, plaintiff had examined one Sh. Vivek Kumar Goel S/o Sh. Ved Prakash Goel, R/o B-178, Sector 44, Gautam Budh Nagar, Noida, UP-201301, who had filed in evidence, his examination-in-chief by way of affidavit Ex. PW1/A, wherein he had stated that he was one of the partners of Banwari Lal Shri Ram, later came to be known as Banwari Lal Ved Prakash, having office at 545, Katra Ishwar Bhawan, Kari Baoli, Delhi-06 and Banwari Lal Shri Ram was carrying on business for more than 90 years and during the course of his business, he was regularly purchasing goods of the Plaintiff bearing the trademarks/labels "IWP", "IWP 4RS", "4S" and "SS" and PW1 had also substantiated the invoices, purchase records, bills and other supporting documents at page no.s 40-51, 53-56, 59, 60, 62, 70, 72, 78, 80, 83, 84, 88, 94, 95, 98, 100, 118, 125, 129, 132, 134, 143, 156, 158, 185-187, 220-223, 239, 240, 244.

However, this witness was not cross-examined on behalf of the Defendant despite availing an opportunity.

Plaintiff had also examined Mr. Sanjay Biyani S/o Sh. Satyanarayan, aged about 53 years, 5-8-292, Chiragali Lane,

Abids, Nampally, Hyderabad, Andhra Pradesh-500001, as PW2 who had filed in evidence, his examination-in-chief by way of affidavit Ex. PW2/A, wherein he had stated that he was taking care of business of M/s K.S. Biyani & Co, having its office at 15-7-430, initially known as Biyani Corporation and the said firm during the course of its business was stated to be regularly purchasing goods of the Plaintiff bearing the trademarks/labels "IWP", "IWP 4RS", "4S" and "SS" and PW2 had also substantiated the invoices, purchase records, bills and other supporting documents at page nos. 61, 65, 71, 86, 87, 89-92, 96, 97, 99, 107, 109, 111, 120, 123, 126, 128, 130, 131, 133, 135-138, 140-142, 144, 157, 159-161, 163-165, 167-177, 179, 180, 182-184, 188-191, 193, 195, 196, 198-207, 209, 211, 212, 214, 215-219, 224, 226, 228-238, 242-252, 254, 256-259.

During his cross-examination conducted by Ld. Counsel for the Defendant, he had admitted that from last 30 years, he was working as a Manager in a Proprietorship firm M/s KS Biyani and Co. and was fully aware about the day to day business affairs of the firm, however, he was not the proprietor of said firm. Plaintiff company was stated to have been doing the business of Kattha and was known to him prior to 1998 and invoices mentioned in para 4 of his affidavit were stated to have been issued in his presence and he was well aware of their contents and had stated that IWP was mentioned on those invoices, however after going through the para 4 of his affidavit, he had stated that the Trademark IWP was not mentioned in the description of the goods in the aforesaid invoices. A suggestion contrary to it was denied by him that the invoices mentioned in

para 4 of his affidavit were forged by the plaintiff in connivance with him.

He could have produced the original invoices, if directed by the Court. After going through the packaging at page no. 2 to 4 of plaintiff documents, he had stated that the same were the packaging of the products of the plaintiff and were exhibited as Ex.PW2/PX1, Ex.PW2/PX2 and Ex.PW2/PX3.

PW2 was not aware as to when M/s K S Biyani and Co had made its first purchase from the plaintiff company as the same was done by his father prior to his joining the firm and he had purchased Kattha from the plaintiff company in the year 1998.

Earlier the packaging of the plaintiff's products was stated to be different from the packaging Ex.PW2/PX1 to Ex.PW2/PX3 and these packaging were stated to be in the market since 1998. He had denied the suggestion that he was not working in the firm as mentioned above or that he was deposing falsely at the instance of the plaintiff.

Plaintiff had also examined Sh. Ram Kumar Binani, S/o Late Sh. Ganga Das Binnani, aged about 58 yrs, R/o C2/125, 2nd Floor, Yamuna Vihar, New Delhi-110053, who had filed in evidence, his examination-in-chief by way of affidavit Ex. PW3/A, wherein besides reiterating the contents of his plaint on solemn affirmation, he had also placed on record the following documents:-

1. **Ex.PW3/1 (colly)-** True Representation of the plaintiff's IWP trademarks/labels (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/1).

2. **Ex. PW2/PX1 to Ex. PW2/PX3**- Original packaging/trade dress of the Plaintiff's IWP Katha 4R'S', 4'S' and Katha SS (however in affidavit Ex. PW3/A, exhibited as Ex.PW1/2).

3. **Ex.PW3/2-** True Representation of the Defendant's impugned UWP trademark/label (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/3).

4. **Ex.PW3/3-** Original packaging/trade dress of the defendant's impugned UWP Katha PFS (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/4).

5. **Ex.PW3/4 (Colly) -** Comparison chart of the plaintiff IWP trademark/label/trade dress with defendant's impugned UWP trademark/label/trade dress (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/5).

6. **Ex.PW3/5 (colly) -** Status report of the plaintiff's trademarks under no. 770112, 770111 and 4024522 along with registration certificates and journal copy (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/6).

7. **Ex.PW3/6-** Receipt from the Trade Marks Registry for applying for Legal Proceedings certificate in respect of the trademark registration

under no. 770112, 770111 and 4024522 (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/7).

8. **Ex.PW3/7 (colly) -** Status report of the plaintiff's trademark applications under nos. 1323 & 164386 (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/8).

9. **Ex.PW3/8 (Colly) -** Status report of the plaintiff's trademark registration under no. 1436441 & 1550069 along with registration certificate and Journal copy (However in affidavit Ex. PW3/A, exhibited as Ex. PW1/9).

10. **Ex.PW3/9-** Extract from the book titled "The Wealth of India, A Dictionary of Indian Raw Materials & Industrial Products, Vol-I-A". Although, the same was de- exhibited and marked as **Mark A** (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/10).

11. **Ex.PW3/10-** Extracts from documents titled as 'Indian Standard-Methods of Sampling and Test for Katha published by Bureau of Indian Standards. Although, the same was de- exhibited and marked as **Mark B.** (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/11).

12. **Ex.PW3/9 (Colly) -** Bills/invoice of the plaintiff (page no. 40-44, 46-52, 57-58, 60-62, 64-70, 72, 75, 98-105, 118-112). (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/12).

13. **Mark C (colly)-** Bills/invoice of the plaintiff (page no. 45, 53-56, 59, 63, 71, 73, 74, 76-97, 106-117 de-exhibited being photocopies, but were shown as part of Ex. PW3/9).

14. **Ex.PW3/10 (colly)-** Bills/invoice of the plaintiff from the year 2010 to 2018 (pages 123 to 256 of paper book) (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/13).

15. **Ex.PW3/13 (colly) –** Photocopies of Transport Bills of the Plaintiff. Although, the same was de- exhibited and marked as **Mark D (colly)** (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/14)**.**

16. **Ex.PW3/11 (Colly)-** Various advertisements sponsorship promotional material of the plaintiff (page no. 266, 268, 272, 274, 275, 277, 279, 280-283, 289, 291-300). (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/15)

17. **Mark E (colly)**- Various advertisements sponsorship & promotional material of the plaintiff (page no. 263-265, 267, 269-271, 273, 276, 278, 284-288, 290 were de-exhibited being photocopies). (shown to be part of Ex. PW1/15, in Ex. PW3/A).

18. **Ex.PW3/12 (colly)-** News articles of the plaintiff (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/16).

19. **Ex.PW3/13 (colly)-** Relevant screenshots & printouts of the plaintiff's website

www.iwpkatha.com. (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/17)

20. **Ex.PW3/14 (colly)-**Presence of the plaintiff on third party websites such as IndiaMart. (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/18)

21. **Ex.PW3/15 (colly)-** Annual Report of year 2018-2019 of the plaintiff (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/19).

22. **Ex.PW3/16 (colly)-** Status report of the defendant's trademark application under no. 1369763 in Class 31 along with the journal copy & other relevant documents (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/20).

23. **Ex.PW3/17-** Cancellation petition under no. 265571 dated 11.12.2018 filed by the plaintiff against the defendant's trademark registration under no. 1369763 in Class 31 (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/21).

24. **Ex.PW3/18-** Notice of cancellation dated 25.07.2019, issued by the Trade Marks Registry to the defendant. (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/22)

25. **Ex. PW3/19**- Certificate in the form of affidavit of Mr. Ram Kumar Binnani under section 63 of BSA. (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/25)

26. **Ex. PW3/23-**Board Resolution in favour of Mr. Rajiv Malhotra dated 28.04.2018, (Although,

same was de-exhibited and marked as Mark F earlier on 29.05.2026 but re-exhibited on 09.06.2026). (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/23)

27. **Ex. PW3/24-** Board Resolution in favour of Mr. Ram Kumar Binnani dated 30.05.2023 (Although, same was de-exhibited and marked as Mark G earlier on 29.05.2026 but re-exhibited on 09.06.2026).(However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/24)

(However, exhibition of documents was objected to by Ld. Counsel for the Defendant as to the mode and manner of exhibition).

During his cross-examination conducted by Ld. Counsel for the Defendant, PW3 had stated that he was working in the plaintiff company since 1993 and at the time of his deposition, he was working as AGM (Commercial) and Plaintiff company had appointed him its AR in 2023. He was aware of the business dealings, invoices, trademark and copyright registration of the plaintiff company. The information given by him in Para 5 of his affidavit Ex.PW3/A, was stated to be based upon the records of the company and it also possessed the documentary proof thereof and the plaintiff was also stated to have filed the documentary evidence pertaining to the year 1942.

Plaintiff had neither filed the documents i.e. licence of 1962 as mentioned in para 5 (c), nor any documents in support

of the averment as made in para 5 (d), of his affidavit Ex.PW3/A nor its Certificate of Incorporation along with the plaint.

Plaintiff was stated to have been using the trademark "IWP" (Indian Wood Products) since 1942, however, he had not filed any invoices related to 1942 to substantiate its user since then and he was not aware as to why words "proposed to be used", were mentioned in the application Ex.PW3/7 (colly) (at page 21). In 1994, Packaging Ex.PW2/PX1 was designed by Mr. Rajiv Mundra and since 1996, Plaintiff had been using the same, but Plaintiff had not placed any invoice on record to substantiate its use since 1996. However, he had volunteered that the invoices mentioned the term 4RS.

He was aware about the applications Ex.PW3/7 (colly) (at page no.20-21) as the same were filed by the company. The copyright of the plaintiff was stated to be registered under the diary number 20699/2019-CO/A and during his cross-examination, he was confronted with the copyright application status, which was shown as "abandoned", and copy of the same was marked as Mark DX1. However, he had denied the suggestion that plaintiff company had no copyright registration. The plaintiff was stated to have not filed on record any export related invoices of its products along with the suit but the same were mentioned in Annual Report of the company. Sales figures i.e. total sales of company and not of any particular product, as mentioned in para 15 of his affidavit Ex. PW3/A, were stated to be based upon the Plaintiff company records, however, he was

not aware as to who had calculated the same. He had denied the suggestion that those figures were inflated and incorrect.

Plaintiff's website www.iwpkatha.com was stated to be functional since 2000. Defendant firm was stated to be known to PW3 since 1997-98, however, he came to know about its constitution and its partners from the documents of the defendant. The distance between the office of the plaintiff and defendant was hardly 100 meters. In 2018, he came to know that defendant was providing Katha under the trademark UWP (Unique Wood Products).

He had denied the suggestion that the plaintiff was aware about the defendant's selling its product under the trademark UWP since 1997-98. However, it was admitted by him that plaintiff was aware of defendant's selling Katha since 1997-98. PW3 was also stated to be aware that the plaintiff had filed proceedings against registration of the trademark of defendant.

Other formal suggestions were also denied by him as wrong and incorrect including non-existence of any similarity between the trade dresses of the two products.

Plaintiff had also examined its ex-Vice President (Marketing) Sh. Rajiv Mundra, S/o Sh. Manoharlal Mundhra, aged about 62 yrs, R/o B-1104 Omaxe Forest SPA, Sector 93B, Noida, Gautam Buddha Nagar, Uttar Pradesh, as PW4, who had filed in evidence, his examination-in-chief by way of affidavit

Ex. PW4/A, wherein he was stated to be working with Plaintiff since 1990 and in 1994, he had conceived, created and drew an original artistic work of IWP Katha 4R‘S’/ IWP Katha 4‘S’/ IWP Katha SS for the Plaintiff.

During his cross-examination conducted on 09.06.2026, PW4 had stated that he was working in plaintiff company from 1990 to 2022 as Vice President Marketing.

Packaging of 100 gms, Ex.PW2/PX1 was stated to have been designed by him in the 1994, after surveying the market and to solve the problem of supply of small quantity of Katha to the retail vendors/shopkeepers. He had admitted that he had introduced the aforesaid packaging in the industry, however, he had neither given any NOC or agreement, nor transferred any rights to the plaintiff company to use the packaging Ex.PW2/PX1, as it was done by him as a part of his job.

The screenshots Ex.PW3/12 (colly), Ex.PW3/13 (colly), EX.PW3/15 (colly), Ex.PW3/5 to Ex.PW3/8 and Ex.PW3/14 as well as print out of computer generated invoices Ex.PW3/10 (colly) were stated to be not taken by him. However, he had volunteered that the prints outs were taken in his presence.

He was stated to be aware of the other companies/entities dealing with the plaintiff company and Sanjay Biyani and Sh. Vivek Goel were stated to be known to him since 1990 and they were the Plaintiff’s agents at Hyderabad and Delhi

respectively. However, a suggestion contrary to it was denied by him that he did not know them or that they were never in business with the plaintiff company. The plaintiff company was selling goods to the Vivek Goel since 1990.

He was stated to be not aware of the trademark registrations of the plaintiff company except the registration of trademark IWP. The trade dress Ex.PW2/PX1, was stated to be not registered by the Plaintiff company till he was working with it. He had denied the suggestion that the plaintiff company had not started using the trade dress Ex.PW2/PX1 till 2010.

10. Thereafter Plaintiff's evidence was closed.

11. In rebuttal, Defendant had examined its Partner Sh. Anubhav Narang, S/o Sh. Pominder Narang, aged about 44 yrs, having registered office at 252/1-B, Katra Pedan, Tilak Bazar, Khari Baoli, Delhi-110006, who had filed in evidence, his examination-in-chief by way of affidavit Ex. DW1/A, reiterating the contents of his written statement on solemn affirmation. He had also placed on record, the following documents:

i. **Ex.DW1/1-** Authority letter dated 29.06.2020 executed in favour of DW1. (however, same was de-exhibited and marked as **Mark A)**.

ii. **Mark B (colly)-** Photocopy of Partnership Deed dated 01.08.2009 of the defendant Firm from page no. 28 to 32 and retirement-cum-revised partnership deed dated 01.04.2017, page

no. 40 to 44. (However, in affidavit Ex. DW1/A, exhibited as Ex. DW1/2).

iii. **Ex.DW1/1 (colly)-** Photocopy of Partnership Deed dated 01.04.2011 of the defendant Firm from page no. 33 to 39 (However, in affidavit Ex. DW1/A, exhibited as Ex. DW1/2).

iv. **Ex.DW1/2-** Copy of PAN Card of the defendant firm. (However, in affidavit Ex. DW1/A, exhibited as Ex. DW1/4)

v. **Ex.DW1/3-** Photocopy of Trade Mark Registration Certificate in the name of defendant firm M/s Unique Woods Products. (However, same was de-exhibited and marked as **Mark C).**

vi. **Ex.DW1/3-** Photocopy of Import-Export Certificate of the defendant. (However, in affidavit Ex. DW1/A, exhibited as Ex. DW1/6)

vii. **Ex.DW1/4-** The Sales Figures of the defendant firm (However, in affidavit Ex. DW1/A, exhibited as Ex. DW1/7)

viii. **Ex.DW1/5-** GST Registration Certificate of the defendant. (However, same was de-exhibited and marked as **Mark D).** (However, in affidavit Ex. DW1/A, exhibited as Ex. DW1/5)

ix. **Ex.DW1/5-** Advertisement Expenses of the defendant (However, in affidavit Ex. DW1/A, exhibited as Ex. DW1/8).

x. **Ex.DW1/6 (Colly)-** Sale bills/invoices of the defendant firm (However, in affidavit Ex. DW1/A, exhibited as Ex. DW1/9).

xi. **Ex.DW1/7-** The packaging Material of the defendant (However, in affidavit Ex. DW1/A, exhibited as Ex. DW1/10).

(However, exhibition of the documents was objected to by the Ld. Counsel for Plaintiff as to their mode of proof and admissibility).

During his cross-examination conducted on 21.07.2026, DW1 had stated that he was the partner of Defendant firm since 2004 and the same was constituted as a partnership firm in 1992, though the partnership deed was executed in 1996. However, copy of partnership deed of 1996 was stated to be not on record. He had volunteered that copy of partnership deed executed in 2009 was on judicial record, which also mentioned about the earlier partnership deed. However, a suggestion contrary to it was denied by him that defendant firm was not constituted in 1992 or that no partnership deed was executed in 1996.

He had admitted that he had not placed on record the original Authority letter issued by the defendant firm in his favour. However, he had denied the suggestion that he was not authorized by the defendant firm to file the WS or to appear as a witness in the present case.

Defendant was stated to have filed Import-Export Code (IEC) Ex.DW1/3, issued in 1995 to show that it was in business since 1996, as the said certificate was obtained for

importing and exporting the goods. However, Defendant had neither filed any document regarding import and export of goods till date, nor any documents regarding any payments made or received from abroad. He had denied the suggestion that Ex. DW1/3, was false and fabricated document or that defendant firm had never exported or imported any goods.

Defendant was stated to have neither filed the CA certified sales figures of goods since 1992, nor any ledger and CA certified figures to corroborate the sales figure mentioned in Ex.DW1/4, neither it had filed any document regarding expenditure incurred in advertisement of its products as stated in Ex.DW1/5, nor any invoice issued by any advertisement agency. He had denied the suggestion that the PAN card obtained by the defendant as well as documents Ex. DW1/4 and Ex. DW1/5 were forged and fabricated.

Plaintiff was stated to be known to him since 2004 and he was well aware about the products, in which the plaintiff was dealing but not aware about its brand.

During his further cross-examination in post lunch session on the very same day, DW1 had admitted that Ex.DW1/6 (colly) page 54 to 64 were computer generated invoices, however, he had not placed on record any evidence to substantiate that the payment of those invoices were received by the defendant and had also not filed any delivery challans/builty to substantiate the delivery of goods mentioned in those invoices. He had admitted that Defendant had not filed certificate under

section 65B of Indian Evidence Act or Section 63 of BSA 2023. He had denied the suggestion that invoices Ex.DW1/6 not belonged to the defendant. However, he had volunteered that the defendant firm was operating from Delhi as well as Kundli.

DW1 was graduated in Humanities stream. The labels Ex.DW1/7 (page 65) were stated to have been designed by the designer at his father's instructions, however, he did not remember the name of the designer and when they were got designed by the Defendant. Defendant was stated to have not placed on record any bill or proof of payment to the designer.

No document was stated to have been placed on record by Defendant to show as to since when, defendant firm had resoluted to adopt the mark "UWP", labels Ex.DW1/7 and trade dress. Defendant was stated to have not used the label on its invoices but used the word mark "UWP". He had denied the suggestion that the defendant had falsely adopted the mark "UWP" and the labels and the same were never used by the defendant in the market. His father was stated to have informed him about the events which had taken place prior to his joining the Defendant firm.

Other formal suggestions were also denied by him as wrong and incorrect.

12. Thereafter Defendant's Evidence was also closed.

13. I have heard Sh. Som Nath De and Sh. Shivam Jamini, Ld. Counsels for Plaintiff and Sh. Aakash Bhambri, Ld. Counsel for defendant, at length and have also gone through the record as well as written submissions filed on behalf of both the parties.

Ld. Counsel for the Plaintiff in his written submissions had reiterated the contents of his plaint and had submitted that the prior adoption and registration of the trade mark by the Plaintiff was protected under the common law rights because of its prior use and reference in this regard was made to documents Ex. PW3/6, Ex. PW3/9 to Ex. PW3/13 and Ex. PW3/15.

He had further placed reliance on the following citations:

(i) "*Centaury Traders Vs. Roshan Lal Duggar Co.*" [MANU/DE/0153/1977]

(ii) "*S. Syed Mohideen Vs P. Sulochana Bai",* (2016) 2 Supreme Court Cases 683

(iii) "*Midas Hygiene Industries P. Ltd and Ors. Vs. Sudhir Bhatia And Ors.*", MANU/SC/0186/2004,

(iv) "*Mr Sanjay Arora Vs Jasmer"*, CS(COMM) 614/2022, Delhi High Court, pronounced on 24.04.2024.

Wherein, it was held by the Hon'ble High Court as well as Hon'ble Apex Court that the rights of a prior user would override the rights of the other party emerging from statutory registrations.

It was further stated that the testimony of PW1 and PW2 had remained unrebutted by the Defendant and even the PW3 had categorically deposed that IWP '4RS', which was appeared on its invoices had shown the prior user of the said trademark by the Plaintiff as compared to that of the Defendant. Even Defendant had also failed to put any effective challenge by way of cross-examination of PW4 to refute, contradict the Plaintiff's evidence regarding the adoption, authorship, ownership, and use of the trademark, label, and artistic work. In this regard reliance was further placed by the Plaintiff on the following citations:-

(i) Muddasani Venkata Narsaiah (D) through LRs v. Muddasani Sarojana, (2016) 12 SCC 288,

ii) State of U.P. v. Nahar Singh (1998) 3 SCC 561,

(iii) Laxmibai v. Bhagwantbuva, (2013) 4 SCC 97

(iv) Rukhmani Keshwani vs Raju Agarbatti Works & Anr.,FAO (COMM 99/2024) date of Judgment 01.07.2026.

Wherein, it was held that where material evidence adduced by a party remained unchallenged in cross-examination, then it was liable to be accepted and treated as admitted.

It was further stated that the Defendant's adoption and user of trade mark "UWP" word *per se* and label, artistics and stylized trade dress were deceptively similar to the Plaintiff's trademark/label/packaging, which for an unwary purchaser of average intelligence and imperfect recollection was likely to cause confusion and thus the court had to see the similarities and not the dissimilarities and mere likelihood of confusion was sufficient to grant relief in favour of the Plaintiff. Reliance in this regard was also placed on following citations:

> (i) *K.R. Chinna Krishna Chettiar v. Shri Ambal & Co. & Ors.*, MANU/SC/0303/1969, AIR 1970 SC 146
>
> (ii) *Ruston & Hornby Ltd. v. Zamindara Engineering Co.*, AIR 1970 SC 1649
>
> (iii) *G.M. Modular Pvt. Ltd. v. TM Marketing (India) & Ors.*, 2007 (35) PTC 406 (Del)
>
> (iv) *M/s Hitachi Ltd. v. Ajay Kr. Agarwal & Ors*., MANU/DE/0698/1995
>
> (v) *Amritdhara Pharmacy v. Satya Deo Gupta*, AIR 1963 SC 449
>
> (vi) *Dhani Aggarwal v. Mahesh Yadav & Ors.*, FAO-IPD 23/2021 (22.08.2022)
>
> (vii) *M/s L. D. Malhotra Industries vs M/s Ropi Industries*, 1975 SCC Online Del 172.
>
> (viii) *Marico Limited Vs Mr. Mukesh Kumar And Ors*. CS (COMM) 1569/2016"

It was further argued that a mere registration of Defendant was not enough and reliance was placed on the following citations:

(i) "*American Home Products Corp vs MAC Laboratories Pvt. Ltd." (1996) 1 SCC 465*
(ii) "*Times Drugs and Pharmaceuticals vs Galpha Laboratories Ltd., CS (COMM) 398 of 2018", order dated 06.03.2024.*

and the dishonest adoption and concurrent user by the Defendant did not constitute any legitimate concurrent use and lastly, it was submitted that placing of documents such as partnership deed, PAN Card, GST Registration, Import-Export certificates of Defendant etc. did not prove the user of the trademark/label by it. The Defendant's witness had also failed to furnish any specific or cogent response in respect of sales invoices placed on record by it, hence it was prayed that the suit of the Plaintiff was liable to be decreed in its favour and against the Defendant.

In support of his arguments and contentions, Ld. Counsel for the Defendant had relied upon the citation of our own Hon'ble High Court in case titled as "***Ms Anuradha Sharma & Anr. Vs. Jiva Ayurvedic Pharmacy Limited***" *FAO (Comm.) 334/2025 decided on 01.12.2025,* wherein Hon'ble High Court was pleased to hold as under:

"20. Before closing this order, we feel it incumbent to note that we find from orders which are coming before us, passed by the learned Commercial Courts, as in the present order, that, often times, there is no reference to whether the order is being passed on the basis of infringement or passing off and, if the order is passed on the basis of passing off, no clear finding of the existence of goodwill and other ingredients which are necessary to be established in a passing off action is contained in the order. We, therefore, request the learned Commercial Courts, dealing with such actions, as under:

(i) The learned Commercial Courts should positively state in the order as to whether it is granting injunction on the ground of infringement, or passing off, or both.

(ii) If the injunction is being granted on the basis of passing off, there must be a positive finding regarding the existence of the classical ingredients of passing off, especially the requirement of goodwill. In returning a finding of goodwill, the learned Commercial Courts should bear in mind the principles contained in the judgment of the Supreme Court in Brihan Karan Sugar Syndicate regarding the manner in which goodwill is to be proved in a passing off action, and other applicable law in that regard, as well as the requirement of goodwill of the plaintiff having to be established prior to commencement of user of the mark by the defendant."

He had further relied upon the citation of Hon'ble Supreme Court in case titled as "***Brihan Karan Sugar Syndicate Pvt. Ltd. Vs. Yashwant Rao Mohite Krushna Sahakari Sakhar Karkhaha"*** *(2024) 2 CCC 577, decided on 14.09.2023*, wherein Hon'ble Apex Court had held that:

"12. There is a finding recorded by the High Court in the impugned judgment that the labels used on the bottle of country liquor sold by the appellant and the labels on the bottle of country liquor sold by the respondent are similar. At this stage, we may note the legal position regarding the factual details which are required to be proved in a passing off action. Firstly, we may refer to a decision of this Court in the case of Satyam Infoway Ltd. v. Sifynet Solutions (P) Ltd. Paragraphs 13 to 15 of the said decision read thus:

"13. The next question is, would the principles of trade mark law and in particular those relating to passing off apply? An action for passing off, as the phrase "passing off" itself suggests, is to restrain the defendant from passing off its goods or services to the public as that of the plaintiff's. It is an action not only to preserve the reputation of the plaintiff but also to safeguard the public. The defendant must have sold its goods or offered its services in a manner which has deceived or would be likely to deceive the public into thinking that the defendant's goods or services are the plaintiff's. The action is normally available to the owner of a distinctive trade mark and the person who, if the word or name is an invented one, invents and uses it. If two trade rivals claim to have individually invented the same mark, then the trader who is able to establish prior user will succeed. The question is, as has been aptly put, who gets these first? It is not essential for the plaintiff to prove long user to establish reputation in a passing off action. It would depend upon the volume of sales and extent of advertisement.

14. The second element that must be established by a plaintiff in a passing off action is misrepresentation by the defendant to the public. The word misrepresentation does not mean that the plaintiff has to prove any mala fide intention

on the part of the defendant. Of course, if the misrepresentation is intentional, it might lead to an inference that the reputation of the plaintiff is such that it is worth the defendant's while to cash in on it. An innocent misrepresentation would be relevant only on the question of the ultimate relief which would be granted to the plaintiff. What has to be established is the likelihood of confusion in the minds of the public (the word "public" being understood to mean actual or potential customers or users) that the goods or services offered by the defendant are the goods or the services of the plaintiff. In assessing the likelihood of such confusion the courts must allow for the "imperfect recollection of a person of ordinary memory".

15. The third element of a passing off action is loss or the likelihood of it." (emphasis added)

13.Thus, the volume of sale and the extent of advertisement made by the appellant of the product in question will be a relevant consideration for deciding whether the appellant had acquired a reputation or goodwill.

14. At this stage, we may also refer to the decision of this Court in the case of Toyota Jidosha Kabushiki Kaisha. In this decision, this Court approved its earlier view in the case of S. Syed Mohideen v. P. Sulochana Bai that the passing off action which is premised on the rights of the prime user generating goodwill, shall remain unaffected by any registration provided in the Act. In fact, this Court quoted with approval, the view taken by the House of Lords in the case of Reckitt & Colman Products. The said decision lays down triple tests. One of the tests laid down by the House of Lords was that the plaintiff in a passing off action has to prove that he had acquired a reputation or goodwill connected with the goods. Thereafter, in paragraph 40 of the said decision, this Court held that if goodwill or reputation in a particular jurisdiction is not established by the

plaintiff, no other issue really would need any further examination to determine the extent of the plaintiff's right in the action of passing off."

14. After examining these written submissions as well as material available on record and hearing both the Ld. Counsels representing their respective parties, my issue wise findings are as under:

Issue No. 1. Whether plaintiff has concealed the fact that defendant has been using trademark/trade name 'Unique Wood Products' and 'UWP' in relations to its goods and business since the year 1992 and 2002? (OPD) (framed on 26.04.2023)
Issue no. 5. Whether the suit of the plaintiff is liable to be dismissed for concealment of material facts and misleading statements in the plaint? OPD (framed on 05.05.2026)

The onus to prove these issues was upon the Defendant and since both these issues are substantially same with slight difference in their language, hence, they are taken up together for the purpose of their disposal.

It has been the case of the Defendant through out that Defendant was also situated in the vicinity of the Plaintiff and was dealing in Katha since beginning and this fact was well within the knowledge of the Plaintiff. However, for the reasons best known to it, Plaintiff had not revealed the same either in his pleadings or in the evidence adduced before the Court and it had claimed to have come to know about the alleged business activities of the Plaintiff only in the year 2018, whereas PW3,

during his cross-examination had demolished the Plaintiff's own case, when he had admitted in para 11 of his cross-examination that Defendant was known to him since the year 1997-98 and he had also claimed to know about the constitution of Defendant firm and its partners from the documents of the Defendant and the distance between the office of Plaintiff and that of the Defendant was stated to be hardly 100 mtrs and further he had admitted that Plaintiff knew that Defendant was also selling Katha since 1997-98, however, it was denied by him that Plaintiff was also aware about the Defendant's selling its product under the Trade mark "UWP" since 1997-98 itself.

He was stated to have come to know in the year 2018 only that "UWP" was the abbreviated form of 'Unique Wood Products'.

Defendant had also obtained the registration of its trademark on 12.06.2007 for the registration of Katha, "UWP Katha PFS", Label/mark in class 31 of the Trade Marks Act and claiming its user since 01.04.2002 and admitted that the Plaintiff had no such registration of trademark/label with the similar trade dress in its favour, which it was stated to have allegedly coined/designed in the year 1994 and was using since 1996. Therefore both these issues are answered in affirmative and decided in favour of the Defendant and against the Plaintiff holding that Plaintiff had deliberately concealed the fact of knowing the defendant and its business activities since 1997-98 and had falsely claimed to have come to know about the same only in year 2018.

Issue No. 2) Whether defendant's trademark 'UWP' is visually and structurally dissimilar to the trademark/label of plaintiff? (OPD), (framed on 26.04.2023)

Issue No. 1. Whether the trademarks and trade dress of the plaintiff (IWP) and trademarks and trade dress of defendant (UWP) are deceptively similar to each other, if so, its effect? OPP (framed on 05.05.2026)

Since both the issues are again substantially similar with different language and wording, hence, they are taken up together for their disposal and the onus to prove issue no. 2 framed on 26.04.2023 was upon the Defendant and the onus to prove issue no. 1 framed on 05.05.2026 was upon the Plaintiff.

Be that as it may, from the evidence adduced on record by both the parties, it has appeared that Plaintiff had obtained the registration of its trademarks pertaining to "IWP" label/device and word mark, the details of which were provided in the table here as under:

Sr. No	TM Application no.	Application dated	Certificate detail	Registration for	Registration valid up to
1.	770112	22.09.1997	Certificate No. 372512 dated 18.05.2005	IWP (label) TM Device	22.09.2027 Class 30
2.	770111	22.09.1997	Certificate No. 657435 dated 28.11.2007	IWP TM Device	22.09.2027 Class 30
3.	4024522	12.12.2018	Certificate No. 2392691	IWP TM Wordmark	12.12..2028 Class 31

			dated 10.02.2020		
4.	1323	24.06.1942	Proposed to be used	IWP TM Device	Present status: removed Class 1
5.	164386	04.06.1954	Proposed to be used	IWP TM Device	Present status: removed Class 31
6.	1436441	22.03.2006	Certificate No. 764954 dated 17.11.2018	IWP TM Wordmark	22.03.2026 Class 35
7.	1550069	16.04.2007	Certificate No. 833985 dated 13.02.2010	IWP TM Wordmark	16.04.2027 Class 39

However, as per the Plaintiff's own documentary evidence as well as the cross-examination of PW3, it has become an established fact on record that in both the applications seeking registration of trademark filed on 24.06.1942 and 04.06.1954, the Plaintiff had claimed the registration on the basis of "proposed to be used", which negated its theory regarding already using the said trademark since the aforesaid years.

If the trademarks are examined virtually then, a bare perusal of the record and admitted pleadings of the parties reflects that both the Plaintiff as well as Defendant were using the abbreviated forms of their companies' name as their product trademark/trade name/label, because the Plaintiff is working under the name of "Indian Wood Products Co. Ltd." and thus is using "IWP" being its abbreviated form as its trademark, whereas

Defendant is working under the name and style of "M/s Unique Wood Products" and is using "UWP" as its trademark.

So far as the registration held by the Plaintiff is concerned, I have no hesitation in holding that if the trademarks of both the parties are compared and closely scrutinized, then both the trademarks are appearing in square boxes with different background colours as the Plaintiff's mark has a light brownish background, whereas the Defendant's trademark has a muted brownish/brownish tan background.

Furthermore, there is white background in the square shape, in which Plaintiff's trademark/label "IWP" is written whereas, Defendant's trademark "UWP" is written in the same background, which occupies the whole square. Even the circular outline of Defendant's trademark is much thicker and clearly visible as compared to that of the Plaintiff's mark. The fonts of two trade marks are also different in style and size. Both the words "IWP" and "UWP", except for the "WP", which stands for wood products, which is a generic term used in the Katha Industry, do not have any visual, phonetic or any other kind of similarities whatsoever in nature.

In this regard, I am also guided and supported by the latest pronouncement of Hon'ble Apex Court in case titled as "***Pernod Ricard India Pvt Ltd Vs Karanveer Singh Chhabra***, Civil Appeal No. 10638 Of 2025, judgment dated 14.08.2025, wherein Hon'ble Apex court was pleased to observe and hold as under:

"23. The High Court, upon consideration of the material on record, concurred with the findings of the Commercial Court and held that the respondent's use of the word 'PRIDE' was unlikely to mislead or confuse a consumer of average intelligence. Products such as those in question are generally identified and purchased by their complete names, or more commonly, by their first words. In the appellants' trademark, the first word is 'BLENDERS', whereas in the respondent's mark, it is 'LONDON'. There is absolutely no similarity between the two. The Court further held that 'PRIDE' is a generic, commonly used, and laudatory expression. It concluded that the dominant part of the appellants' mark is 'BLENDERS'. A comparison between 'IMPERIAL BLUE' and 'LONDON PRIDE' was found to be wholly irrelevant, as the marks are entirely dissimilar. Accordingly, there could be no likelihood of confusion or deception in the mind of a reasonable consumer. The Court also noted that the word 'PRIDE' is publici juris, common to the trade, and cited the existence of 48 other trademarks containing the word 'PRIDE' registered under Classes 32 and 33, many of which are also registered with the Excise Authorities for sale of liquor. Therefore, the appellants could not claim exclusive rights over the 'PRIDE' component of their marks.

.....

29. Before delving further, it is important to note that a passing off action is a common law remedy designed to protect the goodwill and reputation of a trader against misrepresentation by another, which causes or is likely to cause confusion among consumers. As observed by James L.J, in Singer Manufacturing Co v. loog,22 "no man is entitled to represent his goods as being the goods of another man". A passing off action applies to both registered and unregistered marks, and is rooted in the principle that one trader should not

unfairly benefit from the reputation built by another. In contrast, an action for trademark infringement is a statutory remedy under the Trade Marks Act, 1999 available only in relation to registered trademarks. It is intended to safeguard the exclusive proprietary rights that registration confers.

29.1. A key distinction between the two lies in the requirements of proof. In an infringement action, the plaintiff is not required to establish the distinctiveness or goodwill of the mark – registration, by itself, affords the right to seek protection. If the impugned mark is shown to be identical or deceptively similar to the registered mark, no further evidence of confusion or deception is necessary. However, in a passing off action, the plaintiff must prove: (i) the existence of goodwill or reputation in the mark, (ii)a misrepresentation made by the defendant, and (iii)a likelihood of damage to the plaintiff's goodwill.

29.2. While an intent to deceive is not a necessary element in either action, passing off requires proof of a likelihood of confusion or deception. It is well settled that actual deception or damage need not be proved – the test is whether 1880 18 Ch.D. 395, p.412 confusion is probable in the mind of the average consumer due to the similarity in the marks or the overall get-up of the goods.

29.3. Another key distinction is that in a passing off action, the defendant's goods need not be identical to those of the plaintiff – they may be allied or even unrelated, provided the misrepresentation is such that it affects or is likely to affect the plaintiff's business reputation. In contrast, infringement requires that the unauthorised use relate to the same or similar goods or services for which the trademark is registered.

29.4. Additionally, in an infringement suit, it is not necessary for the plaintiff to establish use of

the mark; even a registered proprietor who has not commenced use can sue for infringement. However, in a passing off action, the plaintiff must demonstrate prior and continuous use, and that the mark has acquired distinctiveness in the minds of the public.

29.5. Thus, while both actions seek to prevent unfair competition and protect against consumer confusion, an action for infringement offers broader statutory protection based solely on registration and ownership. In contrast, passing off is grounded in equitable principles and imposes a higher evidentiary burden to safeguard commercial goodwill under common law.

....

31. Trademark protection – whether based on name, colour combination, trade dress, or structural features – centres on a mark's ability to distinguish the commercial origin of goods or services in the minds of consumers. The likelihood of confusion remains the cornerstone of both infringement and passing off actions.
31.1. A registered trademark is infringed when a person, in the course of trade, uses a mark that is identical or deceptively similar to a registered trademark in relation to similar goods or services. Section 2(1)(h) of the Trade Marks Act, 1999 defines 'deceptively similar' to mean 'a mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion'.

31.2. Whether a trade mark is likely to deceive or cause confusion is a question of fact. Courts have consistently held that the broad and essential features of the rival marks must be considered. The assessment focuses on visual appearance, phonetic similarity, the nature of the goods, the class of purchasers, and the manner of sale.

31.3. As held in Parker – Knoll Ltd v. Knoll International Ltd.23, proof of an intention to

deceive is not required; a likelihood of confusion is sufficient to establish infringement or passing off. The evaluation must be made from the standpoint of an average consumer with imperfect recollection, emphasizing the overall commercial impression rather than engaging in a minute or mechanical comparison.

31.4. The strength of a trademark lies in its inherent distinctiveness or the distinctiveness acquired through use. Invented or coined marks – such as Kodak or Solio – are inherently distinctive and command the highest degree of protection. These marks immediately signify the commercial origin of the goods or services. In contrast, descriptive marks – such as Air India, Mother Dairy, HMT, Windows, Doordarshan, LIC, and SBI – are not inherently distinctive and must acquire secondary meaning in the minds of the public to qualify for 1962 RPC 265 protection. That is, the public must come to associate the mark with a particular source. Similarly, geographical terms like Simla or Liverpool, or generic trade terms, are generally not registrable unless they have acquired distinctiveness through long and exclusive use. The more distinctive a mark – whether inherently or through acquired reputation – the stronger its position in infringement or passing off actions.

31.5. In the case of composite marks – those contained multiple elements, such as words and logos – the overall impression created by the mark is relevant. However, proprietors cannot claim exclusive rights over individual components, particularly, non-distinctive or descriptive elements. Courts have often required disclaimers of such generic parts at the time of registration. For instance, in Tungabhadra Industries Ltd v. Registrar of Trade Marks24, the registration of "Diamond T" in a diamond-shaped logo was granted, but the word "Diamond" was required to be disclaimed due to its non-distinctiveness. 31.6. Short marks, especially those consisting of two-letter or

minimal-character combinations, are treated cautiously. These are often considered non-distinctive, because they tend to resemble abbreviations, product codes, or alphanumeric references – especially in industries such as textiles, chemicals and machinery.

AIR 1959 SC 989 Unless secondary meaning is clearly demonstrated, such marks may be refused registration. However, courts have recognized exceptions for arbitrary or invented short marks that are not commonly used in the relevant trade – particularly in sectors like food and beverages, where even brief combinations can act as unique identifiers of origin.

31.7. Colour combinations are treated similarly to single colours combined with other distinctive elements. A specific combination of colours may be prima facie registrable depending on its manner of presentation. For example, colours used within a defined geometric shape may qualify for registration. Where colours are applied to packaging or labels, the burden of proving acquired distinctiveness is higher. In such cases, the proprietor must show that the colour scheme functions as a badge of origin. Ultimately, trademark law seeks to protect indicators of source – both inherently and through acquired distinctiveness – which were previously protectable only through the more demanding process of a passing off action.

31.8. Trade dress, encompassing the overall visual appearance of a product – including packaging, layout, colour schemes, and graphics – also enjoys protection. Indian courts have recognized that a deceptively similar trade dress, even in the absence of a word mark, may mislead consumers and constitute passing off, particularly where visual cues trigger brand association and market confusion.

31.9. Applying the foregoing principles to the present case, we are not persuaded that the respondent's mark is deceptively similar to the

appellants' registered trademarks, when viewed in totality. The appellants' marks – 'BLENDERS PRIDE', 'IMPERIAL BLUE', and 'SEAGRAM'S' – are inherently distinctive. By contrast, the respondent's mark 'LONDON PRIDE' uses the term 'PRIDE' in a distinct commercial context and overall presentation. The term 'PRIDE' being a common and laudatory expression, cannot be claimed exclusively in isolation. Although both parties' trade dress and colour schemes feature elements of blue and gold, such similarities are insufficient to establish deceptive similarity. The placement of elements, design of labels, font styles, and emblems differ in material respects. Viewed holistically, the competing marks do not create such an overall resemblance as is likely to cause confusion or deception in the mind of an average consumer exercising imperfect recollection. (B) RULE OF ANTI-DISSECTION.

32. A foundational principle in trademark law is that marks must be compared as a whole, and not by dissecting them into individual components. This is known as the anti-dissection rule, which reflects the real-world manner in which consumers perceive trademarks – based on their overall impression, encompassing appearance, sound, structure, and commercial impression. In Kaviraj Pandit Durga Dutt Sharma v. Navratna Pharmaceuticals Laboratories (supra), this Court underscored that the correct test for trademark infringement is whether, when considered in its entirety, the defendant's mark is deceptively similar to the plaintiff's registered mark. The Court expressly cautioned against isolating individual parts of a composite mark, as such an approach disregard how consumers actually experience and recall trademarks.

32.1. While Section 17 of the Trade Marks Act, 1999 restricts exclusive rights to the trademark as a whole and does not confer protection over individual, non- distinctive components per se, courts may still identify dominant or essential features within a composite mark to assess the

likelihood of confusion. However, this does not permit treating such features in isolation; rather, they must be evaluated in the context of the overall commercial impression created by the mark.

32.2. This approach finds further support in the observations of scholars such as McCarthy in Trademarks and Unfair Competition, who note that consumers seldom engage in detailed, analytical comparisons of competing marks. Purchasing decisions are instead based on imperfect recollection and the general impression created by a mark's sight, sound, and structure. The anti-dissection rule thus aligns the legal test for infringement with the actual behaviour and perception of consumers in the marketplace.

32.3. Consequently, in disputes involving composite marks, the mere presence of a shared or generic word in both marks does not, by itself, justify a finding of deceptive similarity. Courts must undertake a holistic comparison examining visual, phonetic, structural, and conceptual elements, to assess whether the overall impression created by the rival marks is likely to mislead an average consumer of ordinary intelligence and imperfect memory. If the marks, viewed in totality, convey distinct identities, the use of a common element – particularly if it is descriptive or laudatory – will not by itself amount to infringement. 32.4. In the present case, the appellants' attempt to isolate the word 'PRIDE' as the basis of comparison is legally untenable. Trademark similarity must be assessed by considering the mark as a whole, and not by extracting a single component for comparison. When viewed in their entirety, the appellants' marks – 'BLENDERS PRIDE', 'IMPERIAL BLUE', and 'SEAGRAM'S' – are structurally, phonetically, and visually distinct from the respondent's mark 'LONDON PRIDE'. The mere presence of the common word 'PRIDE' which is a generic and laudatory term, does not render the competing marks deceptively similar in the

absence of an overall resemblance. Thus, under the anti-dissection rule, no case for infringement or passing off is made out. (C) DOMINANT FEATURE TEST

33. In determining whether a mark is deceptively similar to another, courts often consider the dominant feature of the mark – that is, the element which is most distinctive, memorable, and likely to influence consumer perception. While the anti-dissection rule requires marks to be compared in their entirety, courts may still place emphasis on certain prominent or distinguishing elements, especially where such features significantly contribute to the overall commercial impression of the mark.

33.1. The principles of the anti-dissection rule and the dominant feature test, though seemingly in tension, are not mutually exclusive. Identifying a dominant feature can serve as an analytical aid in the holistic comparison of marks. In certain cases, an infringing component may overshadow the remainder of the mark to such an extent that confusion or deception becomes virtually inevitable. In such instances, courts – while maintaining a contextual and fact-specific inquiry – may justifiably assign greater weight to the dominant element. However, emphasis on a dominant feature alone cannot be determinative; the ultimate test remains whether the mark, viewed as a whole, creates a deceptive similarity likely to mislead an average consumer of ordinary intelligence and imperfect recollection.

33.2. An analogy that aptly illustrates the significance of a dominant element in a composite mark is that of mixing milk and water. If a small quantity of milk is added to a half-glass of water, the mixture becomes cloudy – the change is perceptible, but the dominant character remains watery. Conversely, if the same amount of water is added to a half-glass of milk, the result still appears to be milk – the dilution is imperceptible. Though the components are the same, the

perceptual impact differs, depending on which element dominates. Similarly, in trademark analysis, the presence of common elements across marks does not automatically indicate a likelihood of confusion. What matters is the relative prominence and distinctiveness of the elements. Just as the milk in the second example visually and qualitatively overwhelms the water, a dominant feature in a mark can subsume other components and shape consumer perception. Therefore, while assessing deceptive similarity, due weight must be given to the dominant element, without disregarding the composite nature of the mark. 33.3. The dominant feature of a mark is typically identified based on factors such as its visual and phonetic prominence, placement within the mark (with initial components often carrying greater perceptual weight), inherent distinctiveness, and the degree of consumer association it has generated. The dominant element functions as the "hook" that captures the consumer's attention and facilitates brand recall. For instance, in composite marks such as 'BLENDERS PRIDE' or 'IMPERIAL BLUE', the terms 'BLENDERS' and 'IMPERIAL' may be regarded as dominant, owing to their distinctive and less frequently used character. In contrast, elements such as 'PRIDE' or 'BLUE' are relatively generic, descriptive, or commonplace in the liquor industry, as evidenced by other marks like ROCKFORD PRIDE, ROYAL PRIDE, or OAK PRIDE. Such shared or non-distinctive terms cannot be monopolized, unless it is established that they have acquired secondary meaning through extensive and exclusive use, and are uniquely associated with the plaintiff's goods in the minds of the public. 33.4. In the present case, the appellants contend that the respondent's use of the mark 'LONDON PRIDE' infringes their marks 'BLENDERS PRIDE' and 'IMPERIAL BLUE'. However, upon a holistic comparison, the overall commercial impression of 'LONDON PRIDE' is substantially different from either of

the appellants' marks. The trade dress, label design, colour scheme, typography, and brand presentation are all distinctive and unrelated. Moreover, the term 'LONDON' introduces a geographical identifier that conveys a distinct brand identity, divergent from 'BLENDERS' or 'IMPERIAL'. The respondent's mark, therefore, does not imitate the dominant features of the appellants' marks. As such, there exists no real likelihood of confusion or false association in the mind of an average consumer exercising ordinary caution and imperfect recollection.

34. It is a well-established principle of trademark law that generic, descriptive, or laudatory terms – particularly those commonly used in a given trade – cannot be monopolized by any one proprietor. Even where such terms form part of a registered trademark, protection does not extend to those elements per se unless it is affirmatively shown that they have acquired secondary meaning – i.e., that the term has come to be exclusively and distinctively associated with the plaintiff's goods in the perception of the consuming public. 34.1. In Godfrey Philips India Ltd v. Girnar Food & Beverages Pvt. Ltd.25, this Court unequivocally held that descriptive words denoting the character or quality of goods are not capable of exclusive appropriation, except where they have acquired distinctiveness through prolonged, continuous, and exclusive use. 34.2. The word 'PRIDE' is a laudatory and commonly used English term, typically employed to suggest notions of excellence, heritage, or national identity.

(2004) 5 SCC 257 Within the alcoholic beverages industry, it is extensively used as part of various trademarks. Judicial notice may be taken of multiple registrations under Class 33 – such as McDowell's Pride, Highland Pride, Royal Pride, and Pride of India – all incorporating the term 'PRIDE'. This widespread usage illustrates that the word is publici juris, not inherently distinctive, and therefore incapable of exclusive

appropriation in the absence of compelling evidence of secondary meaning.

34.3. The appellants' mark 'BLENDERS PRIDE' is a composite trademark, comprising the suggestive term 'BLENDERS' – alluding to the craft of blending spirits – and the laudatory word 'PRIDE'. By contrast, the respondent's mark 'LONDON PRIDE', couples a geographical term with the same non-distinctive word 'PRIDE'. The mere presence of a shared generic or descriptive element is insufficient, by itself, to support a claim of deceptive similarity. 34.4. In Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd. (supra), this Court reaffirmed that deceptive similarity must be assessed holistically, taking into account factors such as the nature of the marks, the class of purchasers, mode of purchase, and the overall circumstances surrounding the trade. 34.5. In the present case, the appellants have failed to produce cogent evidence – such as consumer surveys, brand recognition studies, or consistent third-party references – to demonstrate that the term 'PRIDE' has acquired secondary meaning exclusively pointing to their product. Mere duration of use, turnover, or marketing expenditure is insufficient to displace the term's inherent descriptive or laudatory character. As judicial precedent makes clear, even extensive use of a descriptive term does not justify exclusivity unless such use has displaced the word's primary meaning, so that it now serves as a source identifier in the minds of the consuming public.

34.6. Applying the settled legal principles, it is evident that the marks 'BLENDERS PRIDE' and 'LONDON PRIDE' are visually, phonetically, and conceptually distinct. The appellants cannot assert monopoly over the common term 'PRIDE', and no actionable similarity arises merely from its use in the respondent's mark. In the absence of demonstrable confusion or misrepresentation, the respondent's use does not amount to infringement under Section 29 nor does it constitute passing off.

35. The average consumer test is a central standard in trademark and unfair competition law. It assesses whether there exists a likelihood of confusion between two marks, or whether a mark lacks distinctiveness or is merely descriptive. The test is grounded in the perception of the average consumer – a person who is reasonably well-informed, observant, and circumspect, but not an expert or overly analytical. As held by the European Court of Justice in Lloyd Schuhfabrik Meyer v. Klijsen Handel BV 26 , the average consumer forms an overall impression of a mark rather than dissecting it into individual components. 35.1. A key feature of this test is the recognition that consumers rarely recall trademarks with perfect accuracy. For example, this Court in Amritdhara Pharmacy v. Satyadeo Gupta (supra) emphasized that the comparison must be made from the perspective of a person of average intelligence and imperfect recollection. Thus, minor phonetic or visual similarities may cause confusion if the marks share prominent or memorable features. The test also considers that the degree of consumer attentiveness may vary depending on the nature of the goods:

greater care may be exercised when purchasing luxury items than in the case of everyday consumer goods.

35.2. The test is equally relevant to both inherent and acquired distinctiveness.

A mark has inherent distinctiveness if, by its very form and appearance, it identifies trade origin to the average consumer at the time of registration. A mark may acquire distinctiveness if, through consistent and prolonged use, it becomes associated by a significant portion of the relevant public with a particular Case C-342/97; [2000] F.S.R. 77, ECJ commercial source – even if the consumer cannot name the source precisely. What matters is not that the consumer knows the

producer, but that the mark serves as an indicator of origin.

35.3. However, the test has limitations. In cases involving product shapes or designs, where the features serve a technical function or add substantial value, policy considerations may override consumer perception. While the average consumer may identify the essential characteristics of a product's shape or configuration, their opinion is not determinative in assessing registrability, especially where legal prohibitions against functional or aesthetic monopolies come into play.

35.4. The doctrine of imperfect recollection, closely linked to the average consumer test, emphasizes the importance of first impression. Courts have cautioned against overly technical or granular comparisons of trademarks [See: James Crossley Eno v. William George Dunn27 and Aristoc Ltd v. Rysta Ltd,28]. Instead, they have favoured realistic assessments that account for hazy memory, indistinct pronunciation, and fleeting visual impressions. Notably, invented or fanciful words are generally more difficult to recall than common or descriptive H.L. (E) 1890, June 19. Vol. XV, App. Cas. page 252 1945 AC 68 (House of Lords) ones, and distinctive features are more likely to be retained in the consumer's memory.

35.5. The foundational test for assessing deceptive similarity remains the Pianotist Test, as laid down in Pianotist Co. Ltd's Application 29 by Justice Parker. Indian courts continue to apply this holistic standard, which requires consideration of the visual and phonetic similarity of the marks, the nature of the goods, the class of consumers, and all surrounding circumstances. Justice Parker framed the test as follows:

"You must take the two words. You must judge of them, both by their look and by their sound. You must consider the goods to which they are

applied, the nature and kind of customer who would be likely to buy the goods, and all the surrounding circumstances. You must further consider what is likely to happen if each of these trademarks is used in a normal way for the respective goods. If, considering all these circumstances, you come to the conclusion that there will be confusion – not necessarily that one trader will be passed off as another – but that there will be confusion in the mind of the public leading to confusion in the goods, then registration must be refused." 35.6. This multifactorial framework complements the modern average consumer test, ensuring that the analysis of deceptive similarity remains practical and context-sensitive. It focuses on the overall commercial impression left by the marks, rather than conducting a mechanical or analytical breakdown. Indian courts have consistently adopted this approach in determining the likelihood of confusion in both infringement and passing off actions.

(1906) 23 RPC 774 at p. 777 35.7. Applying these principles, it becomes evident that the rival marks are not deceptively similar. The appellants' trademarks – 'BLENDERS PRIDE', 'IMPERIAL BLUE', and 'SEAGRAM'S' – convey distinct commercial impressions, when compared with the respondent's mark 'LONDON PRIDE'. The overall visual appearance, phonetic structure, and trade dress – though sharing some generic elements such as use of blue and gold – are sufficiently different. These structural and conceptual dissimilarities between the marks outweigh any incidental similarities, negating the likelihood of confusion in the mind of a consumer of average intelligence and imperfect recollection."

In view of this documentary as well as ocular testimony of PW3, during his cross-examination, it does not

appeal to a prudent mind that the person situated at a distance of 100 mtrs in the same market and engaged in the same business would not be knowing the business activities and trade name of the other players in the same industry, hence, it is a hard fact to digest that the Plaintiff did not come to know about the Defendant's trademark and its user till 2018, despite knowing it fully well since the year 1997-98 and even the doctrine of "acquiescence" shall also apply in the given facts and circumstances of the case, which was explained clearly by the Hon'ble Supreme Court in case titled as "***Amritdhara Pharmacy Vs. Satya Deo Gupta"***, *1962 SCC OnLine SC 13,* decided on 27.04.1962, wherein Hon'ble Apex Court was pleased to hold as under:-

> *"3. The Registrar of Trade Marks dealt with the application and the opposition thereto by his order dated September 10, 1953. It appears that apart from the affidavits filed, no other evidence was led on behalf of either party; but certified copies of certain decisions in earlier cases (to which the respondent was not, however, a party) given in favour of the appellant in support of its claim of infringement of its registered trade mark 'Amritdhara' were filed. A list of such cases has been printed as annexure 'A'. These cases showed that a number of medicines with the word 'Amrit' or 'dhara' as part of their names had been introduced in the market since 1947; and the appellant 'successfully took action against them for infringement of its trade mark. Even in the Trade Marks Registry the appellant successfully opposed the introduction of names which contained the word 'dhara' as part of the,trade name. A question has been raised before us whether the Registrar of Trade Marks was justified in taking into consideration the decisions in those cases. To that question we shall advert*

later. The Registrar found that in 1901 Pandit Thakur Datta Sharma commenced to do business at Lahore in a particular ayurvedic medicine which was meant for alleviation for of headaches, diarrohea, constipation and other complaints. This medicine was first sold under the mark 'Amrit Ki Dhara', but in 1903 the name was changed to "Amritdhara', Pandit Thakur Datta Sharma formed a limited liability company in 1942 and the name 'Amritdhara' became a well-known popular name for the medicine. The sale of the medicine went up to about Re. 4 lacs a year. The business was done in Lahore but when partition came in 1947, the appellant established its business in Dehradun. The Registrar expressed the view that if the matter had rested on s. 8 and s. 10(1) of the Act, he world have no hesitation in allowing the opposition and dismissing the application. This could only mean that the Registrar was of the view that the name 'Lakshmandhara' so nearly resembled the trade mark 'Amritdhara' that it was likely to deceive the public or cause confusion to the trade. We are saying this because the High Court through that the Registrar did not express his own opinion whether the name 'Lakshmandhara' was likely to cause deception to the public or confusion to the ' trade. The respondent, however, relied also on two other circumstances, viz. (a) honest concurrent user of the name 'Lakshmandhara' since 1923, and (b) acquiescence on the part of the appellant in the user of the name Lakshmandhara'. The respondent contended that these two circumstances brought the case With in the meaning of special circumstances' in A. 10(2) of the Act, which permitted the registration by more than one Proprietor of trade marks which are identical or nearly resemble each other, subject to such condition and limitations, if any, as the Registrar might think fit to impose. On the point of honest concurrent user the Registrar found in favour of the appellant. As to acquiescence he, however, found in favour of the

respondent and expressed his finding in these words.

"In the case before me it is not disputed that the applicant commenced his user in a small way in 1923 and it may even be said that up to about 1942 the applicant's user was insignificant. In paragraph 12 of the applicant's affidavit dated the 30th March, 1953 he has given details of advertisements in directories, pamphlets, newspapers etc. in which both the applicant's and the opponents' marks were advertised. The facts given in the affidavit go to show that from 1938 right up to the date of the applications by the applicant he has been advertising through mediums which were common to both the applicant and the opponents. Here we have a case in which Pandit Thakur Datta Sharma states that he had no notice of the applicant's mark. He has, however, admitted that he had about 12 persons in his factory which constituted the clerical staff and amongst them were persons who were in charge of advertising the opponents mark. It seems to me that the opponents and their agents were well aware of the advertisements by the applicant and did not raise any protest till the applicant's mark was advertised in the Trade Mark Journal. In other words the opponents stood by and, allowed the applicant to develop his business and, as I have shown, from small beginning he began to sell these medicines to the extent of about Rs. 43,000/-in 1949. In my opinion, this is acquiescence which would come under, the phrase 'or other special circumstances' in section 10(2) of the Trade Marks Act and, that appears to me to be fatal to the case of the opponents."

Before the Registrar it was admitted on behalf of the respondent that his goods were sold mainly in, Uttar Pradesh and there were, at the most, only sporadic sales in other States. Taking that circumstance into consideration the Registrar

passed an order allowing registration of 'Lakshmandhara' for sale in the State of Uttar Pradesh only".

In view of these observations, I have no hesitation in holding that the Plaintiff had concealed this fact and had falsely claimed itself to have to come to know about the Defendant and its products for the first time in the year 2018, which was destroyed by its own witnesses PW3.

Hence, I have no hesitation in holding that Defendant had successfully discharged the onus of issue no. 2 framed on 26.04.2023, which is accordingly answered in affirmative and decided in favour of the Defendant and against the Plaintiff. Consequently, issue no. 1 framed on 05.05.2026 answered in negative and decided in favour of the Defendant and against the Plaintiff.

Issue No. 3) Whether the suit of plaintiff is liable to be dismissed on account of mis-joinder of necessary parties? (OPD)

Onus to prove this issue was upon the Defendant. However, it was never pleaded by the Defendant as to for whose mis-joinder the suit was bad as there was only one Defendant. Once there has been only one Defendant, then the possibility of mis-joinder does not arise at all. Moreover, no cogent evidence was also adduced on behalf of the Defendant to discharge the onus of this issue.

Perusal of the record further reveals that although the Ld. Predecessor was pleased to frame the issue regarding mis-joinder of the necessary party, however, the Defendant in para 13 of its preliminary objections, had taken an objection regarding non-joinder of necessary parties. Be that as it may, even if it is presumed that the suit was bad for non-joinder of necessary parties, then also, I have no hesitation in holding that Defendant had miserably filed to show as to who else was a necessary and proper party in the given facts and circumstances of this case. The issue is accordingly answered in negative and decided in favour of the Plaintiff and against the Defendant.

Issue No. 4) Whether the plaintiff is entitled to decree for permanent injunction as prayed for in prayer clause (I) of the plaint? (OPP) (framed on 26.04.2023)

Issue No. 2. Whether the plaintiff is entitled for decree of permanent injunction as prayed for?OPP (framed on 05.05.2026)

The onus to prove both these issues was upon the Plaintiff as it is evident from the language of both the aforesaid issues framed on different dates and Plaintiff had examined PW1, PW2, PW3 and PW4 to discharge the same. PW1 and PW2 have deposed about their being customers of the Plaintiff and purchasing the goods from it since 1994. However, merely a lip service was done by them to that effect without substantiating it with any cogent evidence.

So far as reliance on invoices appearing at pages no. 40-51, 53-56, 59, 60, 62, 70, 72, 78, 80, 83, 84, 88, 94, 95, 98,

100, 118, 125, 129, 132, 134, 143, 156, 158, 185-187, 220-223, 239, 240, 244 by PW1 and invoices by PW2 appearing at pages no. 61, 65, 71, 86, 87, 89-92, 96, 97, 99, 107, 109, 111, 120, 123, 126, 128, 130, 131, 133, 135-138, 140-142, 144, 157, 159-161, 163-165, 167-177, 179, 180, 182-184, 188-191, 193, 195, 196, 198-207, 209, 211, 212, 214, 215-219, 224, 226, 228-238, 242-252, 254, 256-259, are concerned, I have no hesitation in holding that invoices placed on record by the Plaintiff running from page No. 40 till 122 do now anywhere mention the products as IWP 4RS, 4S, SS as deposed by the PW1 and PW2 and the said invoices pertained to machine Katha 4RS as mentioned in invoice dated 16.05.1994 and only the abbreviated form of Plaintiff's name i.e. "IWP" finds its mention in the challan number, which does not convey any meaning that it was also used by the Plaintiff as its trade name/label/mark.

It was only for the first time i.e. on 05.04.2010, that in the invoice placed on record at page no. 123 Ex. PW3/10 (colly) that the mark "IWP" as a trade mark/trade name/label had appeared on the invoices of the Plaintiff. However, again in the description of goods as mentioned in those invoices, there was no mention of "IWP" Katha and it was sold as Katha No 4RS to customers.

So far as PW4 is concerned, although he had claimed to have coined the said terms and packagings in the year 1994. However, PW3, had categorically admitted in his cross-examination by Defendant that there was no evidence in the form of any invoices placed on record to show that the packaging Ex.

PW2/1X was being used by the Plaintiff since the year 1996. Even PW4, besides doing a mere lip service in this regard had failed to substantiate his claim of having conceived, created and drawn an original artistic work, used by the Plaintiff company as IWP Katha 4 RS, IWP 4S, IWP Katha SS.

As already held above in my findings to the previous issues that the Plaintiff's own documents have contradict its plea of being a user of trade mark IWP since 1942 or since 1954 as in those applications, it had mentioned the same as "proposed to be used" device mark and not as 'already in use' device mark and the registration of this word mark was obtained by the Plaintiff in its favour, only on 17.11.2008 vide Ex. PW3/8, which was much after the registration of its trademark packaging dress by the Defendant. Similarly, the trade mark IWP word was registered in favour of the Plaintiff on 13.02.2010, as reflected from page no. 25 of the paper book forming part of Ex. PW3/8 (colly), whereas Defendant got registration of its trade mark "UWP" vide application no. 1369763 in clause 31 dated 12.06.2007, which was much prior than that of the Plaintiff herein.

As already held above, Plaintiff had miserably failed to adduce any evidence on record to show that it had started using mark IWP either in the year 1942 or 1945 as claimed earlier or even in the year 1996 as claimed by PW1, PW3 and PW4.

Though plaintiff had claimed to have the copyright registration in its favour in respect of trade dress, however, the document mark DX1 vide diary no. 20699/2019/CO/A had categorically revealed that same was abandoned by the Plaintiff at a later stage, hence, the Plaintiff was not even holding any copyright in the said trade dress as claimed by it in the plaint.

Further, during cross-examination of PW3 by the Defendant, it was revealed in para 4 thereof that he had also admitted that there was no evidence adduced on record to show that the packaging dress/ design alleged to have been coined by the Plaintiff through Rajiv Mundra in the year 1994 and had started using the same since 1996. There was no documentary evidence available on record and even the invoices mentioned the term 4RS only and not 'IWP' as claimed.

As per Ex. PW3/5 placed on record at page no. 13 of the paper book, IWP trade mark as a device mark was registered in favour of the Plaintiff in class 30 only on 28.11.2007, device mark appearing at page no. 9 of the paper book about IWP label was registered on 18.05.2005 in class 1 and word IWP as appearing at page no. 16 of the paper book registered on 10.02.2020 in class 31, hence all the marks, either as device ,word mark or label were registered in favor of the Plaintiff either after or during the period when the Defendant had got registration of the trade mark in its favour.

Though it was contended on behalf of the Plaintiff that PW3 was not cross-examined by the Defendant with respect

to document Ex. PW3/15, which was the annual report of Plaintiff company pertaining to year 2018-19, hence the said report stood admitted and duly proved in accordance of law.

However, I am not impressed with this argument and contention raised by Ld. Counsel for the Plaintiff because in the law, where a relief has been claimed on the basis of passing off and prior user, the Plaintiff is essentially required to prove on record, its market share, goodwill and reputation, before the alleged passing off had commenced on the part of the Defendant and not for a period subsequent thereto. Hence, once it has been alleged by the Plaintiff itself that it had come to its notice in the year 2018, that Defendant was passing off its goods as against the prior user of the trade mark and it had also got registration of the said trade mark in its favour in the year 2007 itself, then essentially, the Plaintiff was required to place on record, the evidence of its goodwill, reputation and market share prior to year 2007 and not for a period subsequent thereof.

Moreover PW3, not being an author or the witness to execution of Ex. PW3/15, it could not be held that merely by putting an exhibit mark on the said annual report, the same stood duly proved as per law, which essentially required the defendant to offer a cross-examination of the witness on the said point.

Furthermore, in view of my detailed discussions with respect to trade marks of the parties as held while disposing of issue no. 2, I have no hesitation in holding that both the trade marks i.e. IWP and UWP representing the abbreviated forms of

the parties' trading names to the suit are neither visually, nor phonetically similar, nor there exists any remote possibility of causing any kind of confusion in the mind of customers' segment, who generally buy such products. Therefore, I have no hesitation in holding that Plaintiff has miserably failed to discharge the onus of this issue, so as to claim its entitlement for a decree of permanent injunction against the defendant as prayed in the suit. The issue is accordingly answered in negative and decided in favour of the Defendant and against the Plaintiff.

Issue no. 5) Whether the plaintiff is entitled to delivery up of all the impugned finished and unfinished goods and material bearing the impugned trade mark as prayed for in prayer clause (III) of the plaint (OPP)
Issue no. 3. Whether the plaintiff is entitled for order of delivery up of the impugned goods /materials under the trademark and trade dress of the defendant deceptively to that of plaintiff? OPP (as framed on 05.05.2026)

The onus to prove both these issues was upon the Plaintiff and in view of my findings given to issue no. 4 above, these issues do not call for any detailed discussion for the purpose of their disposal and are accordingly answered in negative and decided in favour of the Defendant and against the Plaintiff.

Issue No. 6) Whether the plaintiff is entitled to decree for rendition of accounts of profits earned by the defendant by

infringing its trademark/ label/trade dress, as prayed for? (OPP)

Issue no. 4. Whether the plaintiff is entitled for decree of rendition of account or in the alternative decree of damages to the tune of Rs. 50 lakhs as prayed for? OPP (as framed on 05.05.2026)

The onus to prove both these issues was again upon the Plaintiff and in view of my findings given to issues no. 4 and 5 above, these issues also do not call for any detailed discussion for the purpose of their disposal and are accordingly answered in negative and decided in favour of the Defendant and against the Plaintiff.

Issue No. 7) Whether the plaintiff is entitled to decree for damages to the tune of Rs.50,00,000/- from the defendant, as prayed for? (OPP)

The onus to prove this issue was again upon the Plaintiff, who had claimed damages to the tune of Rs. 50,00,000/- from the Defendant. However, in view of my findings given to issue no. 4 to 6 above and also in view of the fact that Plaintiff had miserably failed to adduce any evidence regarding any actual loss being suffered by it to the tune of Rs. 50,00,000/- due to any alleged acts or omissions of the defendant, hence, this issue is also answered in negative and decided in favour of the Defendant and against the Plaintiff.

Issue No. 8) Who is entitled to the costs, against whom and in what quantum? Onus on parties.

The onus to prove this issue was placed upon both the parties. However, in view of the given facts and circumstances, I have no hesitation in holding that both the parties have failed to successfully discharge this onus and are thus liable to bear their own costs.

Issue No. 9) Relief.

Issue No. 6. Relief. (as framed on 05.05.2026)

15. In view of my findings given to all the above issues, suit of the Plaintiff is dismissed and both the parties are left to bear their own costs. Decree sheet be drawn accordingly.

16. File be consigned to record room after completion of necessary legal formalities in this regard.

ANNOUNCED IN THE OPEN COURT
DATED:19.09.2026

Lokesh Kumar Sharma
Digitally signed by Lokesh Kumar Sharma
Date: 2026.09.19 14:33:16 +0530

(Lokesh Kumar Sharma)
District Judge (Commercial Court)-02
Central/THC/Delhi

FORM- 'A'

List of witnesses

S. No	Name of Witness	Whether witness of Plaintiff or defendant
1.	Sh. Vivek Kumar Goel	Plaintiff's witness
2.	Sh. Sanjay Biyani	Plaintiff's witness
3.	Sh. Ram Kumar Binani	Plaintiff's witness
4.	Sh. Rajiv Mundra	Plaintiff's witness
5.	Sh. Anubhav Narang	Defendant's witness

List of documents

S.No.	Exhibit/ Mark	Date of Exhibit	Description of Exhibit
1	PW1/A	22.05.2026	Affidavit of PW1 Sh. Vivek Kumar Goel
2	PW2/A	29.05.2026	Affidavit of PW2 Sh. Sanjay Biyani
3	PW2/PX1	29.05.2026	Packagings of the products of Plaintiff
4	PW2/PX2	29.05.2026	Packagings of the products of Plaintiff
5	PW2/PX3	29.05.2026	Packagings of the products of Plaintiff
6	PW3/A	29.05.2026	Affidavit of PW3 Sh. Ram Kumar Biyani
7	PW3/1 (colly)	29.05.2026	True Representation of the Plaintiff's IWP trademarks/labels
8	PW3/2	29.05.2026	True Representation of the Defendant's impugned UWP trademark/label
9	PW3/3	29.05.2026	Original packaging/trade dress of the defendant's impugned UWP Katha PFS
10	PW3/4 (colly)	29.05.2026	Comparison chart of the plaintiff IWP trademark/label/trade dress with

			defendant's impugned UWP trademark/label/trade dress
11	PW3/5 (colly)	29.05.2026	Status report of the plaintiff's trademarks under no. 770112, 770111 and 4024522 along with registration certificates and journal copy
12	PW3/6	29.05.2026	Receipt from the Trade Marks Registry for applying for Legal Proceedings certificate in respect of the trademark registration under no. 770112, 770111 and 4024522
13	PW3/7	29.05.2026	Status report of the plaintiff's trademark applications under nos. 1323 & 164386
14	PW3/8 (colly)	29.05.2026	Status report of the plaintiff's trademark registration under no. 1436441 & 1550069 along with registration certificate and Journal copy
15	PW3/9 (Colly)	29.05.2026	Bills/invoice of the plaintiff (page no. 40-44, 46-52, 57-58, 60-62, 64-70, 72, 75, 98-105, 118-112)
16	PW3/10 (colly)	29.05.2026	Bills/invoice of the plaintiff from the year 2010 to 2018 (pages 123 to 256 of paper book)
17	PW3/11 (colly)	29.05.2026	Various advertisements sponsorship promotional material of the plaintiff (page no. 266, 268, 272, 274, 275, 277, 279, 280- 283, 289, 291-300)
18	PW3/12 (Colly)	29.05.2026	News articles of the plaintiff (However, in affidavit Ex. PW3/A, exhibited as Ex. PW1/16)
19	PW3/13 (colly)	29.05.2026	Relevant screenshots & printouts of the plaintiff's website www.iwpkatha.com.
20	PW3/14	29.05.2026	Presence of the plaintiff on

	(colly)		third party websites such as IndiaMart.
21	PW3/15 (colly)	29.05.2026	Annual Report of year 2018-2019 of the plaintiff
22	PW3/16 (colly)	29.05.2026	Status report of the defendant's trademark application under no. 1369763 in Class 31 along with the journal copy & other relevant documents
23	PW3/17	29.05.2026	Cancellation petition under no. 265571 dated 11.12.2018 filed by the plaintiff against the defendant's trademark registration under no. 1369763 in Class 31
24	PW3/18	29.05.2026	Notice of cancellation dated 25.07.2019, issued by the Trade Marks Registry to the defendant.
25	PW3/19	29.05.2026	Certificate in the form of affidavit of Mr. Ram Kumar Binnani under section 63 of BSA.
26	PW3/23	29.05.2026	Certificate in the form of affidavit of Mr. Ram Kumar Binnani under section 63 of BSA.
27	PW3/24	29.05.2026	Board Resolution in favour of Mr. Ram Kumar Binnani dated 30.05.2023
28	Mark A	29.05.2026	Extract from the book titled “The Wealth of India, A Dictionary of Indian Raw Materials & Industrial Products, Vol-I-A”.
29	Mark B	29.05.2026	Extracts from documents titled as 'Indian Standard-Methods of Sampling and Test for Katha published by Bureau of Indian Standards.
30	Mark C	29.05.2026	Bills/invoice of the plaintiff (page no. 40-44, 46-52, 57-58, 60-62, 64-70, 72, 75, 98-105, 118-112)
31	Mark D	29.05.2026	Photocopies of Transport Bills

	(colly)		of the Plaintiff
32	Mark E	29.05.2026	Various advertisements sponsorship & promotional material of the plaintiff (page no. 263-265, 267, 269-271, 273, 276, 278, 284-288, 290 were de-exhibited being photocopies). (shown to be part of Ex. PW1/15, in Ex. PW3/A)
33	PW3/20	29.05.2026	Board Resolution in favour of Mr. Ram Kumar Binnani dated 30.05.2023
34	PW3/21	29.05.2026	Board Resolution in favour of Mr. Ram Kumar Binnani dated 30.05.2023
35	PW4/A	29.05.2026	Affidavit of PW4
36	DW1/A	15.07.2026	Affidavit of Sh Anubhav Narang
37	DW1/1	15.07.2026	Photocopy of Partnership Deed dated 01.04.2011 of the defendant Firm from page no. 33 to 39
38	DW1/2	15.07.2026	Copy of PAN Card of the defendant firm.
39	DW1/3	15.07.2026	Photocopy of Import-Export Certificate of the defendant.
40	DW1/4	15.07.2026	The Sales Figures of the defendant firm
41	DW1/5	15.07.2026	Advertisement Expenses of the defendant
42	DW1/6 (Colly)	15.07.2026	Sale bills/invoices of the defendant firm
43	DW1/7	15.07.2026	The packaging Material of the defendant
44	Mark A	15.07.2026	Authority letter dated 29.06.2020 executed in favour of DW1.
45	Mark B	15.07.2026	Photocopy of Partnership Deed dated 01.08.2009 of the defendant Firm from page no. 28 to 32 and retirement-cum-revised partnership deed dated 01.04.2017, page no. 40 to 44.
46	Mark C	15.07.2026	Photocopy of Trade Mark

			Registration Certificate in the name of defendant firm M/s Unique Woods Products.
47	Mark D	15.07.2026	GST Registration Certificate of the defendant.