IN THE COURT OF SH. ANIL KUMAR SISODIA:
DISTRICT JUDGE (COMMERCIAL COURT)-03: CENTRAL:
TIS HAZARI COURTS: DELHI.

CNR NO. DLCT010172012021
CS (COMM) NO. 5232/2021

1. Wellness Pathcare India LLP,
2E/3, G. Floor, E-Block, Exit Road,
Karol Bagh, Near Metro Station,
New Delhi-110055. ……..**Plaintiff No. 1**

2. M/s Wellness Pathcare
Deewan House (Basement)
Opp. Yes Bank ATM, Ajay Enclave,
Subhash Nagar, New Delhi-110018 ……..**Plaintiff No. 2**

Versus

Wellness Diagnostics Pvt. Ltd.
Khasra No. 1109, Village Rithala,
New Delhi-110085.

Also at: 418, Sardar Patel Enclave,
Sector-23, Rohini, Gramsabha,
New Delhi-110086.

H.No. 418, Ground Floor,
Gram Sabha, Village Pooth,
New Delhi-110086 ……..**Defendant**

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Date of e-filing of the suit : 10.12.2021
Date of reserving judgment : 08.10.2021
Date of judgment : 29.10.2026

Judgment

1. This is a suit for permanent injunction restraining infringement, passing off, rendition of accounts and delivery up etc. filed by plaintiffs against defendant.

2. Briefly stated, facts of the case are that plaintiff no. 1, LLP concern, is engaged in the business of pathology services including home collection, laboratory services, and preventive health checkup (hereinafter referred to as said services). Plaintiff no. 2, a partnership concern, has been carrying on the business of said services since 2009. In order to proliferate and run the business effectively, in December, 2017, the partners of the plaintiff no. 2 roped in some other persons and got a limited liability partnership incorporated. The purpose of LLP, the plaintiff no. 1, is to take care of the business outside Delhi. One such kind of service is being run in Chandigarh under the aegis of plaintiff no. 1. One assignment deed dated 01.12.2017 was also executed to assign the trademark, registered in class 44 in favour of plaintiff no. 2 to plaintiff no. 1. However, the terms of assignment have not come into effect. However, one trademark in class 35 is still in the name plaintiff no. 2. The trademark in class 44 is still in the name of plaintiff no. 2 and request qua transfer has not been allowed by registry.

3. It has been further stated that the present suit concerns the plaintiff's trade mark/label/name:

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i.e., **WELLNESS PATHCARE** (hereinafter referred as ***"the said trademark/label/name")*** and violation thereof by the defendant on account of their unauthorized and unlawful use of an identical trade mark/label/name:



WELLNESS DIAGNOSTICS (hereinafter referred to as **the *"impugned trade mark/label/name"***) in relation to healthcare and medical diagnostics and pathological services (herein after referred to as "***impugned services***"). The above said violation by the defendant is in course of their business activities, without due cause, taking unfair advantage of and to the detriment of the distinctive character and repute of the said trade mark/label/name of the plaintiff. It is stated that the plaintiff coined, conceived and adopted the said trade mark/label/name **WELLNESS PATHCARE** with respect to said services in the year 2009 and has been continuously using the same since then up to the present time. The plaintiff has been regularly & extensively using the said trade mark/label/name since its adoption and has thereby made it popular and distinctive among the members of the general public.

4. It is further stated that in order to protect its said trade mark/label/name **WELLNESS PATHCARE**, the plaintiff has filed trademark applications for the registration of the said trademark/label/name in class 44 and 35 and both are registered, valid and subsisting. The trademark/label/name of the plaintiff is registered without any disclaimer. The details of the said trademark/label/name are tabled herein below:-

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Trademark	Application Nos.	Class	Date of application	User	Status
	2236752	44	21.11.2011	23.12.2009	Registered
	32188493	35	23.03.2016	23.12.2009	Registered

5. It is further stated that plaintiff is one of the leaders of pathology services. Plaintiff, as above said, maintains highest level of quality and hygiene in providing the said services. Plaintiff has also been engaged in research and development and has been introducing new technology in furtherance of improving the quality of its services and also in order to compete with the other service providers in the respective field. It is further stated that plaintiff's said trade mark/label/name **WELLNESS PATHCARE** has already become distinctive and associated with the aforesaid services on account of their long, continuous, extensive and exclusive user thereof. The public at large associate the said trade mark/label/name **WELLNESS PATHCARE** with the said services of plaintiff and plaintiff has been using the said trade mark/label/name **WELLNESS PATHCARE** exclusively and to the exclusion of others. Plaintiff's said services and its business is wholly dependent on the goodwill and reputation of the trade mark/label/name **WELLNESS PATHCARE**. Plaintiff has built up a valuable trade under the said trade mark/label/name **WELLNESS PATHCARE**. The Plaintiff has earned comprehensive goodwill and reputation. The turnover of the plaintiff has increased considerably from Rs. 26,84,320/- in the financial year 2009-2010 to Rs. 3,17,09,746/- in the financial year 2020-2021. The plaintiff has

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also filed invoices for the various years.

6. It is further stated that plaintiff has widely advertised the said trade mark/label/name **WELLNESS PATHCARE** by prominently displaying the said trade mark/label/name on its display boards, envelops, notepads, calendars and by organizing different health checkup programs and seminars under the same name of the clinic. Plaintiff has been continuously promoting its services under its said trade mark/label/name through different media and modes such as advertisement in newspaper, trade magazines, and distribution of trade literature, trade novelties and through sales promotional schemes. Plaintiff, as such, has already spent a substantial sum of money on the publicity of the said trade mark/label/name **WELLNESS PATHCARE** in consequence thereof the said trade mark/label/name **WELLNESS PATHCARE** enjoys solid and enduring reputation in the markets. Besides advertisement, the plaintiff has adopted different methods to popularize his service. The plaintiff has been advertising its trade and soliciting its services through its exclusive website www.wellnesspathcare.com.

7. It is stated that the plaintiff's said trade marl/label/name has already become distinctive and has acquired secondary significance denoting the services of the plaintiff across India. It is further stated that the plaintiff has been vigilant enough to protect his right in the said trademark/label/name **WELLNESS PATHCARE** and has also in the process issued cease and desist notices and initiated civil proceedings against the third parties who happened to have adopted identical and deceptively similar trademarks. The plaintiff has also filed a commercial suit being CS(COMM) No. 242/2020 in the Central Districts Tis

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Hazari Courts, against a company namely Wellness Healthlabs (OPC) Pvt. Ltd. for the use of impugned trademark/label/name WELLNESS HEALTHLABS which have been restrained by the Hon'ble Court vide ex-parte ad interim injunction dated 04.02.2020 which is still operating and the suit is still pending. The order dated 04.02.2020 is filed herewith.

8. It is further stated that to the knowledge of the plaintiff, the defendant is also engaged in the same nature of business of healthcare and medical diagnostics and pathological services and are operating from the address mentioned from memo of parties. It is stated that plaintiff has been providing the said services since 2009 under the trademark/label/name **WELLNESS PATHCARE** and the defendant knowingly adopted the impugned trademark/ label/ name "*WELLNESS DIAGNOSTICS"* in order to ride piggy back to the goodwill and reputation of the plaintiff in the said trademark/label/name. The defendant has been using www.wellnessdiagnostics.in violation of the proprietary rights of the plaintiff. It is further stated that the defendant is not the proprietor of the impugned trademark/label/ name and has no right to adopt or use the same and is doing so without the leave and license of the plaintiff. It is stated that the plaintiff has acquired distinctiveness and tremendous goodwill in the trade mark/label/name **WELLNESS PATHCARE** which has become a house hold mark of the plaintiff. The trade mark/label/name **WELLNESS PATHCARE** connotes distinctiveness, reputation, quality and goodwill acquired by the plaintiff over a number of years and is understood by the consumers and general public as associated with the plaintiff. Defendant's use of the trade mark/label/ name "*WELLNESS DIAGNOSTICS"*is calculated to derive benefit from the reputation and goodwill enjoyed by the plaintiff and their products under the said trade mark/label/ name

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WELLNESS PATHCARE, thereby perpetrating fraud and deception on the unwary customers by passing off their services as those of the plaintiff. The plaintiff has not permitted or given any assent to the defendant to use the identical and/or deceptively similar trademark/label/name.

9. It is further stated that the impugned trade mark/label/name " *WELLNESS DIAGNOSTICS"* is identical with and deceptively similar to the said trade mark/label/name **WELLNESS PATHCARE** of the plaintiff. They are identical with and deceptively similar in each and every respect including phonetically, visually, structurally, in its basic idea and in its essential features. By the impugned adoption and user, the defendant is infringing and/or passing off and will also infringe and/or pass off and enabling others to infringe and/ or pass off and violate the plaintiff's proprietary rights in its said trade mark/label/name. The impugned trademark/label/name is sufficient enough to cause confusion and deception. The impugned adoption and user of the impugned trade mark/label/name " *WELLNESS DIAGNOSTICS"* is an act of sheer dishonesty on the part of the defendant and the defendant has no justification for such dishonest, malafide, illegal and nefarious act.

10. It is stated that in or about the second week of August, 2020, the plaintiff learnt the violation of his said trade mark/label/name **WELLNESS PATHCARE** by the defendant. The defendant has also got itself registered under the Indian Companies Act. The plaintiff, upon coming to know about the impugned adoption, addressed a cease-and-desist notice to the defendant which has been dispatched on 24.08.2020. It is pertinent to mention here that the plaintiff has not come across the impugned act of carrying out impugned trade and business of the

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defendant under impugned trade mark/label/name after addressing cease and desist notice. The plaintiff has recently in the first week of October, 2021 again came across the services provided by the defendant. The plaintiff also caused search in the Register of Trade Marks and found that the defendant filed an application for the registration of the impugned trade mark under application no. 3313054 in class 44 which has been duly refused by the Trade Marks Registry.

11. It is further stated that the impugned adoption and user by the defendant is dishonest, tainted, malafide and fraudulent. The defendant adopted and started using the impugned trade mark/label/name in respect of the impugned services and business out of positive greed and with a view to take undue advantage and to trade upon the reputation and goodwill of the plaintiff and further with a view to calculate confusion and deception in the market and to pass off their impugned services as those of the plaintiff and to make easy money at the cost of the plaintiff. The defendant has been fully aware of the plaintiff's said rights, user and reputation having accrued to in relation to the plaintiff's said trade mark/label/name at the time of their impugned adoption and user of their impugned trade mark as the plaintiff is such a well-known name in field of pathology services. It is further stated that the resemblance between the plaintiff's said trade mark/label/name and that of the defendant's impugned trade mark/label/name is so close that it can hardly occur except by deliberate imitation. The defendant adopted and started using the impugned trade mark in full knowledge of the plaintiff's said rights. The unwary persons who avail such services which include each and every section of society including the not so well educated/gullible people are bound to be deceived in availing the defendant's impugned services and business under the impugned trade mark/label/name under

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the impression that it is emanating from the plaintiff's source or that some vital links exist between the plaintiff and the defendant. The defendant has been tempted by the singular reputation of the plaintiff's said trade mark/label/name. By its impugned adoption and user of the impugned trade mark/label/name, the defendant is disseminating confusion and deception in the markets with the result that the sub-standards services of the defendant are/will be passed off as the genuine services of the plaintiff. It has been further stated that due to the defendant's impugned activities the plaintiff is suffering tremendously in trade and business and at most in terms of goodwill and reputation. Finding no other alternative, plaintiff company filed the present suit against the defendant.

12. The defendant was duly served with the summons of the suit. Defendant has contested the suit by filing the written statement. It is stated that the defendant has been using the word/mark "*WELLNESS DIAGNOSTICS PVT. LTD.*" as a trademark in relation to its business of body diagnostics. The defendant over a period of time has been using its said trademark in various stylized/artistic formats/labels which have been created and are being created over a period collectively referred to as "the said trademarks". The defendant originally conceived, coined and adopted the unique trademark "*WELLNESS DIAGNOSTICS PVT. LTD.*" in the year 2016 in respect of body diagnosis. The said trademarks are the house mark of the defendant and is being used by the defendant on its reports and bills. The products of the defendants are recognized as *WELLNESS DIAGNOSTICS PVT. LTD.* and same are also bought by the customers as *WELLNESS DIAGNOSTICS PVT. LTD.* products. The defendant represents its said trademark/label in an artistic manner including in its getup, lettering style, colour scheme, placement of words, artistic features etc. The art

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work involved in the defendant's said trademark/label is original within the meaning of the Copyright Act, 1957. The defendant is the author, owner and proprietor of the copyright involved in the said trademark/label. The said trademark is one of the oldest, most prominent, and valuable trademarks of the defendant. The copyright involved in the said "*WELLNESS DIAGNOSTICS PVT. LTD."* trademark/label are original artistic works within the meaning of The Copyright Act, 1957 and the defendant is the author, owner and proprietor of the copyright therein. All references to the said "*WELLNESS DIAGNOSTICS PVT. LTD."* trademark/labels include their respective copyrights therein. Even since its bona fide and honest adoption the defendant has been honestly, bonafidely, continuously, commercially, openly, exclusively and to the exclusion of others, uninterruptedly and in the course of trade and as proprietor thereof has been using its said respective trademark/labels as trademarks in relation to its business and built-up valuable trade, goodwill and reputation and acquired proprietary rights therein. The defendant has all the statutory licenses for his business under the trademark "*WELLNESS DIAGNOSTICS PVT. LTD.".* The defendant's said business is known recognized, demanded, with reference to its said "*WELLNESS DIAGNOSTICS PVT. LTD."* trademark/labels and the members of the trade, industry, consumers and general public are well aware of defendant and its said trademark/labels and the copyright therein. The defendant's goods and business is known, recognized all over India with reference to its said trademark.

13. Defendant has raised preliminary objections that the suit is frivolous, far-fetched and also not maintainable and it is an abuse of the process of court and based on misleading and false allegations. The plaintiff by an ingenious

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presentation of the plaint has created an illusion of a cause of action to sue the defendant. The plaintiff is not entitled to any reliefs prayed for. The plaintiff has filed a false fabricated and concocted suit under Trademark Act, 1991 and Copyright Act, 1957 against the present defendant. The plaintiff has not approached this court with clean hands and has deliberately made false and misleading statements only to drive unjust gains and advantages to the prejudice of defendant. The plaintiff has also attempted to mislead this court by making false statement which to the own knowledge of the plaintiffs are far-fetched and untrue. The plaintiff has misrepresented the court and knowingly made misleading statement in relation to the material particulars particularly with respect to the trademark **WELLNESS PATHCARE** and "*WELLNESS DIAGNOSTICS PRIVATE LIMITED"* which is a dictionary word referring to the state of being good health. The trademark is being used by many companies in India and is common to trade and is in public juris. Many companies are holding registrations of in combinations as part of their trademark. "Wellness" is the act of practicing healthy habits on a daily basis to attain physical and mental outcomes. "WELLNESS" is a generic word used by the common people for the well-being of the human and others and no one has the copy right over the same. The trademark of the plaintiff and the defendant bears no visual similarity whatsoever, apart from the fact that the two labels' marks of products. The defendant's trademark "*WELLNESS DIAGNOSTICS PVT. LTD."* is in a different colour scheme, letting and design from the plaintiff's trademark. The plaintiff does not have any exclusivity to say that no other can perform its business of diagnostics with trademark Wellness. It is stated that the alleged registration of the trademarks claimed to be owned and possessed by the plaintiffs in class 35 for the aforesaid trademarks, does not entitle the plaintiff to do the

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work of pathcare as per their application. The plaintiff has no rights in the trademark/label involved either under the statutory law or under the common law. In the absence of any right the present suit is not maintainable. The defendant is neither causing any infringement nor passing off and suit is wholly misconceived filed in order to scuttle business competition. The present suit is not maintainable as the plaintiff has failed to establish the necessary ingredients to base a cause of action for infringement or passing off. It is stated that suit is not maintainable as the subject matter and rival trademark sued upon by the plaintiff and impugned of the defendant are wholly and entirely different and distinct and there is no deceptive similarity or consumer deception involved. The defendant is not using the alleged label placed on record by the plaintiff. The present suit is barred by the plaintiff as delay, long delay acquiescence and estoppels. It is stated that the artistic work and the trading mark label of the defendant firm is entirely different, distinct from that of the plaintiff. Thus, there is no likelihood of confusion to public nor the defendant is passing off its goods as that of the plaintiff. It is stated that the defendant is a bonafide, honest concurrent and continuous user of the said trademarks since the year 2016 till date. It is stated that the defendant to acquire statutory protection of its trademark label has filed an application No. 3313054 before the Registrar of Trademarks on 20.07.2016.

On merits, the contents of the plaint have been denied and a prayer has been made for the dismissal of the suit.

14. Plaintiff has filed replication to the WS and has reiterated the contents of the plaint and have denied the contents contrary to it.

15. Vide order dated 31.10.2023 injunction application filed by plaintiff u/O

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39 rule 1 & 2 CPC was allowed in its favour and defendant was restrained from using the word "WELLNESS" in its trademark/label and using domain name "www.wellnessdiagnostics.in" or in any other trademark/label/name identical with or deceptively similar to the said trademark / label/ name **"WELLNESS PATHCARE"** of the plaintiff.

16. On the basis of pleadings of the parties, following issues were framed on 13.12.2023: -

1. Whether the defendant has infringed the trademark / label name of the plaintiff? Onus upon by the parties

2. Whether the present suit is barred by the long delay acquiescence and estoppels? Onus upon by the parties

3. Whether the present suit is hit by the Section 69(2) of Indian Partnership Act? OPD

4. Whether the plaintiff is entitled for decree of permanent injunction as prayed in para-A of the prayer clause? OPP

5. Whether the plaintiff is entitled for decree of all the impugned goods as prayed in para-B of the prayer clause? OPP

6. Whether the plaintiff is entitled for rendition of account as stated in para-C or in the alternative a decree of Rs. 3,05,000/- as prayed in para-D of the prayer clause? OPP

7. Relief.

17. In support of its case, the plaintiffs have examined five witnesses. Sh. Ram Charan Tyagi was examined as PW-1 who has tendered his affidavit as Ex PW1/A and proved the following documents in support of the case: -

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Sr. No.	Documents	Exhibits
1.	Trademarks status and Journal page of trademark application no. 2236752 (running into 3 pages)	Ex.PW-1/1A (colly)
2.	Trademarks status and certificates, Journal page of trademark application no. 3218493 (running into 4 pages)	Ex.PW-1/1B (colly)
3.	LPC of the registered trademark of trademark application no. 2236752 (running into 2 pages)	Ex.PW-1/2 (colly)
4.	Status of trademark of defendant under application no. 3313054	Ex.PW-1/3
5.	Partnership Deeds of the plaintiff no. 2 (running into 7 pages)	Mark A (colly)
6.	LLP Agreement of plaintiff no. 1 (running into 12 pages)	Ex. PW-1/4 (colly)
7.	Company Master data of plaintiff no. 1	Ex. PW-1/5
8.	Details of company wise collection (running into 5 pages)	Mark B (colly)
9.	Purchase invoice dated 31.07.2015	Ex. PW-1/6
10.	Purchase Invoices (running into 14 pages)	Mark C (colly)
11.	Invoice of the plaintiff for service rendered dated 7th April 2017	Ex. PW-1/7A
12.	Invoice of the plaintiff for service rendered dated 1st January 2018	Ex. PW-1/7B
13.	Invoice of the plaintiff for service rendered dated 3rd January 2015	Ex. PW-1/7C
14.	Invoice of the plaintiff for service rendered dated 4th February 2016	Ex. PW-1/7D
15.	Invoice of the plaintiff for service rendered dated 6th March 2017	Ex. PW-1/7E

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16.	Invoice of the plaintiff for service rendered dated 4th January 2018	Ex. PW-1/7F
17.	Invoice of the plaintiff for service rendered dated 6th February 2018	Ex. PW-1/7G
18.	Invoice of the plaintiff for service rendered dated 11th April 2020	Ex. PW-1/7H
19.	Invoice of the plaintiff for service rendered dated 2nd June 2021	Ex. PW-1/7I
20.	Income Tax Return of the year 2018-19 (running into 3 pages)	Ex. PW-1/8A (colly)
21.	Income Tax Return of the year 2017-18 (running into 3 pages)	Ex. PW-1/8B (colly)
22.	E-receipts under CST, Income Tax Return, Balance Sheet & Profit Loss Account as Mark D (colly) (running into 28 pages)	Mark D (colly)
23.	Legal Notice issued to the defendant dated 24.08.202 (running into 9 pages)	Mark E (colly)
24.	Company Master Data of defendant	Ex. PW-1/9
25.	Resolution	Mark F
26.	Webpage (running into 12 pages)	Ex.PW-1/10 (colly)
27.	Webpages of defendant (running into 8 pages)	Ex. PW-1/11 (colly)
28.	Order passed by Ld. DJ recognizing the right of the plaintiff in the trademark Wellness Pathcare by granting ex-parte and Interim Injunction as Ex. PW-1/12	Ex. PW-1/12(Same is de-exhibited as same is not on record)
29.	Doctor prescription of Reena Tyagi, cash receipt issued by defendant's sample collection personnel and the test report issued by defendant (running into 15 pages)	Ex.PW-1/13 (colly)(OSR)
30.	Complaint filed in police in police station Hari Nagar regarding misuse of the name of the	Ex.PW-1/14 (OSR)

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	plaintiff in order to solicit the patient	
31.	List of Suspended labs including defendant dated 13.07.2022 issued by NABL	Ex.PW-1/15 (OSR)
32.	Certificate under Section 65 B of Indian Evidence Act	Ex.PW-1/16

18. Mrs. Reena Tyagi was examined as PW-2 who tendered her evidence by way of affidavit as Ex.PW-2/A and relied upon the documents already Ex.PW-1/13 and Ex.PW-1/14.

19. Sh. Avkash Kumar, notice server, Income Tax Department was examined as PW-3 who proved the income tax returns of Wellness Pathcare having PAN No. AABFW4262D for the year 2012-13 to 2023-24 as Ex.PW-3/1 (colly).

20. Sh. Baljit Singh, Associate, State Bank of India was examined as PW- 4 who proved the account statement in the name of Wellness Pathcare having current account no. 32581408362 from March 2013 till date as Ex. PW-4/1 (colly).

21. Sh. Sanjay Thirwani, Chief Section Supervisor, working in office of Manager (Admn.) West, MTNL was examined as Ex.PW-5 who proved the subscriber post connection details qua telephone no. 25551062 in the name of Wellness Pathcare, installed on 07.02.2013 supported by certificate u/s 65 B of Indian Evidence Act as Ex.PW-5/1 and Ex.PW-5/2 respectively. He also proved authority letter as Ex.PW-5/3.

PW-1 to PW-5 were cross-examined by counsel for the defendant and

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thereafter, PE was closed.

22. In its defence, defendant examined three witnesses. Sh. Arun Kumar was examined as DW-1 who tendered his evidence by way of affidavit as Ex. DW-1/A and proved the following documents: -

Sr. No.	Documents	Exhibits
1.	Copy of certificate of incorporation of defendant	Mark A
2.	Copy of memorandum of association of defendant	Mark B
3.	Copy of Defendant's company PAN Card	Ex. DW-1/3 (OSR)
4.	Copy of medical test report having eight pages, of patient named as Sh. A.K. Malhotra issued by defendant	Mark C

23. Sh. Lokesh Chand Yadav, Manager Biochem Diagnostics Service was examined as DW-2 who proved the tax invoices as under:-

Sr. No.	Documents	Exhibits
1.	Tax invoice no. 494 dated 16.05.2017	Ex. DW-2/1
2.	Tax invoice no. 673 dated 02.06.2017	Ex. DW-2/2
3.	Ex. invoice no. 720 dated 08.06.2017	Ex. DW-2/3
4.	Tax invoice no. 1296 dated 28.07.2017	Ex. DW-2/4
5.	Tax invoice no. 1616 dated 19.08.2017	Ex. DW-2/5

24. Sh. Suhail Malik, Examiner of Trademarks was examined as DW-3 who proved the following documents:-

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Sr. No.	Documents	Exhibits
1.	LPC having trademark Wellness bearing registration no. 2126841 in Class 44	Ex. DW3/1
2.	LPC having trademark Wellness bearing registration no. 214357 in Class 44	Ex. DW3/2
3.	LPC having trademark Wellness bearing registration no. 1967981 in Class 99	Ex. DW3/3
4.	Copy of application having trademark Wellness bearing registration no. 3967830	Ex. DW3/4
5.	Copy of application having trademark Wellness bearing registration no. 2078874	Ex. DW3/5
6.	Copy of application having trademark Wellness bearing registration no. 4357468	Ex. DW3/6
7.	Copy of application having trademark Wellness bearing registration no. 2986756	Ex. DW3/7
8.	Copy of application having trademark Wellness bearing registration no. 2219210	Ex. DW3/8
9.	Copy of application having trademark Wellness bearing registration no. 3193993	Ex. DW3/9
10.	Copy of application having trademark Wellness bearing registration no. 2209663	Ex. DW3/10

DW-1, DW-2 and DW-3 were cross examined by counsel for plaintiff and thereafter, DE was closed.

25. I have heard Ld. Counsel for plaintiff and Ld. Counsel for defendant. I have also perused the record carefully. I have also gone through the written submissions filed by the counsels for the parties carefully.

26. Counsel for plaintiffs has relied upon the following judgments in support

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of his arguments: -

S. No.	Judgment	Citation
1.	Haldiram Bhujiawala v. Anand Kumar Deepak Kumar	(2000) 3 SCC 250
2.	M/s Nibro Ltd. v. National Insurance Co. Ltd.	AIR 1991 Delhi 25
3.	Midas Hygiene Industries v. Sudhir Bhatia	(2004) 3 SCC 90
4.	T.V. Venugopal v. Ushodaya Enterprises	(2011) 4 SCC 85
5.	Modi-Mundipharma v. Speciality Meditech	2025:DHC:5039-DB
6.	Laxmikant V. Patel v. Chetanbhai Shah	(2002) 3 SCC 65
7.	The Himalaya Drug Company v. S.B.L. Ltd.	(2013) 53 PTC 1 (Del) (DB)
8.	K.R. Chinna Krishna Chettiar v. Shri Ambal & Co.	(1969) 2 SCC 131
9.	Allied Blenders & Distillers v. Shree Nath Heritage Liquor	2014 SCC OnLine Del 3412
10.	The Indian Hotels Company Ltd. v. Jiva Institute	(2008) 37 PTC 468 (Del) (DB)
11.	Gufic Pvt. Ltd. v. Vasu Healthcare Pvt. Ltd.	(2016) 2 MIPR 15
12.	Pidilite Industries Ltd. v. S.M. Associates	2003 SCC OnLine Bom 143
13.	Godfrey Phillips India Ltd. v. Girnar Food & Beverages	(2004) 5 SCC 257
14.	Sanofi India Ltd. v. Universal Neutraceuticals	2014:DHC:5388
15.	Corn Products Refining Co. v. Shangrila Food Products	AIR 1960 SC 142
16.	Century Traders v. Roshan Lal Duggar	AIR 1978 Delhi 250
17.	Automatic Electric Ltd. v. R.K. Dhawan	1999 PTC (19) 81 (Del)
18.	Jagdish Gopal Kamath v. Lime & Chilli	(2015) 62 PTC 23

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	Hospitality Services	(Bom)
19.	Power Control Appliances v. Sumeet Machines	(1994) 2 SCC 448

27. Counsel for defendant has also relied upon the following judgments in support of his arguments: -

S. No.	Judgment / Authority	Citation
1.	J.R. Kapoor v. Micronix India	MANU/SC/ 1166/1994; 1994 (3) SCALE 732
2.	Mount Mettur Pharmaceuticals Ltd. v. Ortha Pharmaceuticals Corporation	MANU/TN/ 0153/1975; AIR 1975 Mad 74
3.	Indo-Pharma Pharmaceutical Works Ltd. v. Citadel Fine Pharmaceuticals Ltd.	MANU/TN/ 1178/1998
4.	Roche & Co. v. G. Manners & Co.	MANU/SC/ 0302/1969; [1970] 2 SCR 213
5.	Delhivery Private Limited v. Treasure Vase Ventures Private Limited	MANU/DE/ 1862/2020; 2020:DHC:2982
6.	AstraZeneca UK Ltd. & Ors. v. Orchid Chemicals & Pharmaceuticals Ltd.	MANU/DE/ 8684/2006; 2006 (32) PTC 733 (Del)
7.	M/s Pornsricharoenpun Co. Ltd. v. M/s L'Oréal India Private Limited	2022/DHC/004808
8.	Parveen Kumar Jain v. Rajan Seth & Ors.	2019:DHC:2540
9.	Cadila Healthcare Ltd. v. Gujarat Co-operative Milk Marketing Federation Ltd.	MANU/DE/ 2282/2009; 2009 (41) PTC 336 (Del)
10.	Marico Limited v. Agro Tech Foods	MANU/DE/ 3131/2010; 174

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		(2010) DLT 279
11.	SuperonSchweisstechnik India Ltd. v. Modi Hitech India Ltd.	MANU/DE/ 1319/2018
12.	Bharat Biotech International Ltd. v. Optival Health Solutions Pvt. Ltd.	MANU/DE/ 1102/2020
13.	Mankind Prime Labs Private Limited v. Registrar of Trade Marks	MANU/DE/ 2609/2025
14.	D.R. Raanka Bros. v. Om Prakash	MANU/DE/ 2879/2023 (as legible in the index)
15.	S. Syed Moideen v. P. Sulochana Bai	2013 SCC OnLine Mad 3885
16.	Vathsala Manickavasagam v. N. Ganesan & Ors.	(2013) 9 SCC 152
17.	Power Control Appliances v. Sumeet Machines Pvt. Ltd.	(1994) 2 SCC 448
18.	P.K. Sen v. Exon Mobile Corporation & Ors.	MANU/DE/ 0016/2017; 2017:DHC:49-DB
19.	Pernod Ricard India Pvt. Ltd. v. Karamveer Singh Chhabra	2025 SCC OnLine SC 1701
20.	The Coca Cola Company of Canada Ltd. v. Pepsi-Cola Company Ltd.	1942 SCC OnLine SC PC 7
21.	Divisional Manager, United India Insurance Co. Ltd. v.Samir Chandra Chaudhary	2005 5SCC 784

28. Issue wise findings on the basis of evidence and arguments are as under: -

ISSUE NO.2:

Whether the present suit is barred by the long delay acquiescence and estoppels?

Onus upon by the parties

29. The onus of proving this issue has been cast upon the parties. Counsel for

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the defendant has argued that in para 34 of the plaint, plaintiff has taken a stand that the cause of action arose for the first time in the second week of August, 2020 when plaintiff learnt about adoption of the impugned trademark/label/name "*WELLNESS DIAGNOSTICS*". It was argued that in the cross examination, PW-1 Ram Charan Tyagi has deposed that he got knowledge of use of the defendant's mark "*WELLNESS DIAGNOSTICS*" in the year 2016-2017. It was argued that the suit is barred by delay/ laches as the plaintiffs were aware of the defendant mark since 2016-17 and no action was taken by the plaintiffs till 2020. It is further argued that Section 34 of the Trade Mark Act protects the party who has been using a similar mark prior to the date of registration by the plaintiff or independently thereof. He argued that defendant began using the impugned mark in 2016 well before the suit was filed and plaintiffs failed to challenge this use for several years which amounted to acquiescence. Reliance was placed by the counsel for the defendant on the judgment of Hon'ble Supreme Court of India in ***Power Control Appliance Vs Sumeet Machines Pvt. Ltd (supra)*** wherein it was held that a proprietor who sits on his rights and allows another to develop business under a mark cannot claim exclusive relief later on. Therefore, the issue ought to be decided in favour of the defendant.

30. Per contra, counsel for plaintiff has argued that defendant has failed to prove continuous user of the impugned mark. He further argued that the application submitted by the defendant for registration of the impugned trademark was refused by the Registry in the year 2017 itself but plaintiff was not having the knowledge of the same earlier as it was never published in public domain. Counsel for plaintiff has also relied upon the judgment of ***Power Control Appliance Vs Sumeet Machines Pvt. Ltd (supra)*** to argue that acquiescence is

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sitting by when another is invading the rights and spending money on it. It is a course of conduct inconsistent with the claim for exclusive rights in a trademark, trade name etc and it implies positive acts, not merely silence or inaction such as involved in laches.

31. It was argued by the counsel for plaintiffs that plaintiffs are the user of the trademark "**WELLNESS PATHCARE**" since 2009 and got its trademark/label/name registered in the year 2011. He argued that the defendant has not proved on record that it was using the impugned trademark prior to the registration of the trademark by the plaintiffs. It was also argued that the plaintiffs are not supposed to run after each and every individual who violates its trademark leaving their business until and unless the violation assumes such proportions that it threatens the reputation, goodwill and financial stakes of the plaintiff.

32. From a bare perusal of the pleadings of the parties, it is crystal clear that plaintiffs are a prior adopter and user of the trademark/label/name **WELLNESS PATHCARE**, which they have been using since 2009. The plaintiffs have produced the registration certificate of the trademarks showing the year of registration as early as 2011, with user since 23.12.2009, whereas the defendant, by its own admission in the WS, has started using the impugned trademark in the year 2016. Merely because PW-1, in his cross-examination, deposed that he got knowledge about defendant using the impugned trademark "*WELLNESS DIAGNOSTICS*" in the year 2016-17, would not amount to acquiescence on the part of the plaintiffs for not taking action immediately thereafter. Mere delay or inaction, in the absence of conduct indicating that the Plaintiffs knowingly permitted the Defendant to use the impugned mark, does not by itself establish acquiescence. It is pertinent to note here that in the entire WS, defendant has

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nowhere given its annual turnover figures or expenditures incurred on promotion of its trademark which may lead to an inference that defendant was actively promoting its impugned trademark against the trademark of the plaintiff and still the plaintiff failed to take any action against them. Rather, the conduct of the defendant in adopting the trademark similar to the trademark of the plaintiffs much after the plaintiffs adopted their trademark, when considered alongside the similarities between the competing marks and the overlapping nature of the services, would support the plaintiffs' contention of dishonest adoption and an attempt to ride on the goodwill of the plaintiffs. Mere delay in taking action against the infringer by itself is insufficient to defeat the claim of the plaintiffs who have a valid registration of the trademarks in their favour. Reliance in this regard can be placed on the judgment of ***Modi-Mundipharma Pvt. Ltd. v. Speciality Meditech Pvt. Ltd. & Anr., 2025:DHC:5039-DB*** wherein the Hon'ble Division Bench reiterated the principle laid down in ***Midas Hygiene Industries Pvt. Ltd. v. Sudhir Bhatia (supra)*** wherein it was held that mere delay and laches do not defeat the right to grant an injunction if trademark infringement is established. Further, the Defendant's reliance upon Section 34 of the Trade Marks Act, 1999, is of no assistance on the facts of the present case, as the Defendant has claimed use commencing in 2016, subsequent to the Plaintiffs' claimed user since 23.12.2009 and registration in 2011. The Defendant has, therefore, failed to establish prior use so as to avail the protection contemplated under the said provision.

In view of the aforesaid discussion, the issue is decided in favour of the plaintiffs and against the defendant.

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ISSUE NO. 3:

Whether the present suit is hit by the Section 69(2) of Indian Partnership Act? OPD

33. The onus of proving this issue has been cast upon the defendant. Counsel for defendant has argued that the suit filed by the plaintiffs is not maintainable as plaintiff no. 1 does not have the assignments of the trademarks in their favour which is admitted by the plaintiffs and plaintiff no. 2 is a partnership firm and suit by an unregistered firm is not maintainable. It was argued by counsel for defendant that plaintiffs have not proved the registration certificate of the partnership firm and only the partnership deed has been filed.

34. Per Contra, counsel for plaintiff no. 2 has argued that law is well settled that action based on torts like infringement and passing off can be filed by an unregistered partnership firm and bar of Section 69 (2) of Partnership Act will not apply in such cases. Reliance has been placed on the judgment of ***Haldiram Bhujiawala & Anr. Vs Anand Kumar Deepak Kumar & Anr. (supra)***, and ***T.V. Venugopal Vs Ushodaya Enterprises Ltd. &Anr. (supra)***, in support of his arguments.

35. Law is now well settled by the Hon'ble Supreme Court in ***Haldiram Bhujiawala & Anr. Vs Anand Kumar Deepak Kumar & Anr. (supra)*** that Section 69(2) of the Partnership Act does not bar enforcement of statutory trademark rights or common-law passing-off rights merely because the partnership is unregistered.

36. In view of the aforesaid discussion, the issue is decided in favour of the

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plaintiffs and against the defendant.

Issues No. 1&4:

1. **Whether the defendant has infringed the trademark / label name of the plaintiff ? Onus upon by the parties**

4. **Whether the plaintiff is entitled for decree of permanent injunction as prayed in para-A of the prayer clause? OPP**

37. These issues are taken up together as these issues can be disposed of by common discussion. The onus of proving issue no.1 has been cast upon the parties whereas onus of proving issue no.4 has been cast upon the plaintiff.

38. It is the case of the plaintiffs that the plaintiffs are the registered proprietors of the trademarks under Classes 44 and 35 and have been using the same since 2009 in relation to pathology, diagnostic and allied healthcare services. It was argued that the defendant's mark " *WELLNESS DIAGNOSTICS PVT. LTD.*" is deceptively similar to the plaintiffs' mark **"WELLNESS PATHCARE"**, as both prominently feature the word **"WELLNESS"** and relate to identical or allied services. The plaintiffs further submitted that the rival marks, the nature of the parties' businesses and their overlapping trade channels are likely to cause confusion and lead the public to believe that the defendant is associated with the plaintiffs. It was submitted that the defendant could not defeat the plaintiffs' rights in their registered composite marks merely by asserting that "WELLNESS" was common to the trade. Reliance in this regard was placed upon **Laxmikant V. Patel v. Chetanbhai Shah** (Supra); **The Himalaya Drug Company v. S.B.L. Limited,** (Supra); **Automatic Electric Ltd. v. R.K. Dhawan,** (Supra)*; and*

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Pidilite Industries Ltd. v. S.M. Associates (Supra).

39. Per contra, Ld. counsel for the defendant argued that the word **"WELLNESS"** is common and descriptive of health-related services and cannot be monopolized by the plaintiffs. It was contended that the expressions "PATHCARE" and "DIAGNOSTICS", along with the differences in the logos, colours, stylization and overall presentation, distinguish the rival marks. The defendant further argued that, under Section 17 of the Trade Marks Act, 1999, registration of a composite mark does not confer exclusive rights over a non-distinctive component thereof. It was also submitted that the defendant independently adopted and continuously used its mark since 2016–2017 and that the plaintiffs had failed to establish that they acquired distinctiveness in the word **"WELLNESS"** or any likelihood of confusion. In support of his arguments, counsel for defendant placed reliance upon **J.R. Kapoor v. Micronix India** (Supra); **F. Hoffmann-La Roche & Co. Ltd. v. Geoffrey Manners & Co. Pvt. Ltd** (Supra); **M.M. Pharmaceuticals Ltd. v. Astra Pharmaceuticals Pvt. Ltd.,** (Supra) and **South India Beverages Pvt. Ltd. v. General Mills Marketing Inc.,** (Supra).

40. I have considered the rival submissions and have carefully perused the oral and documentary evidence led by the parties.

41. The plaintiffs have proved their trademark application and registration documents as Ex. PW-1/1A (Colly.), Ex. PW-1/1B (colly.) and Ex. PW-1/2. The same establishes that plaintiff No. 2 is the registered proprietor of the trademark ***"WELLNESS PATHCARE"*** under Class 44, whereas the registration under Class 35 stands in the name of one of the partners, Sunil Duggal who has not been made a party in the suit in his individual capacity. Plaintiff no. 1 is merely a

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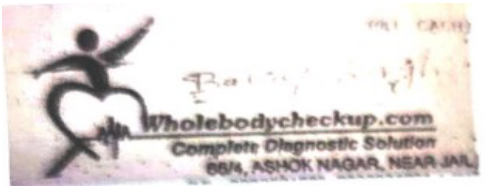
permitted user of the trademark and therefore not entitled to institute a suit against the defendant as provided under Section 53 of The Trademarks Act, 1999. Plaintiff no. 2 being registered proprietor of the registered trademark has authority to institute the suit against defendant as per Section 52 of The Trademarks Act, 1999. The plaintiffs have also proved the defendant's trademark application bearing Application No. 3313054 as Ex. PW-1/3. It is pertinent to note that the same was refused by the Trademark Registry and as per documents available on record, defendant has not challenged the order of the Trade Mark Registry.

42. PW-1, Sh. Ram Charan Tyagi, deposed regarding the plaintiffs' business under the name **"WELLNESS PATHCARE"** and their use of the registered trademark. In his cross-examination dated 05.06.2024, he stated that the business had been carried on under the said name since 2009 and that the partnership deed had been filed. PW-1 also relied upon documents collectively marked as Mark C (colly), including patient and health-check-up receipts dated 16.10.2011, 01.04.2012, 07.03.2012 and 02.03.2013, bearing the plaintiffs' device mark along with the artistic work of plaintiffs, i.e.,



43. The plaintiffs have further relied upon invoices and patient-service records exhibited as Ex. PW-1/7A to Ex. PW-1/7I, including records relating to the period 2015–2021 and receipts bearing the name **"WELLNESS PATHCARE"** dated 07.04.2017 and 01.01.2018. The record also includes health-check-up conducted at ICICI Bank and several purchase invoices from 2014 to 2019. The above said documents, considered cumulatively, provide documentary

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support for the plaintiffs' continuous use of the mark and the associated device in the course of their healthcare and diagnostic activities since 2011 upto the filing of the suit.

44. The plaintiffs have also placed reliance upon the police complaint, exhibited as Ex. PW-1/14 (OSR), and the testimony of PW-2, Smt. Reena Tyagi who has deposed that upon contacting the defendant, she was informed that it was **"WELLNESS PATHCARE"**, following which a technician collected her blood sample and a receipt was issued in the plaintiffs' name. Her testimony thus indicates that the defendant represented itself as the plaintiffs' establishment. Although, in her cross-examination dated 17.09.2024, PW-2 could not recall the telephone number or the precise date of the incident and had no proof establishing the person's connection with the defendant, her testimony regarding the misrepresentation has not been effectively rebutted by the Defendant except for giving some bald suggestions which failed to shake her credibility, hence the testimony of PW-2 can be safely be relied upon in support of the Plaintiffs' case.

45. The defendant's case, as set out by DW-1, Sh. Arun Kumar, is that the defendant adopted the name *"WELLNESS DIAGNOSTICS PVT. LTD."* and its impugned mark in or around 2016 and has used the same since 2016–2017. In his cross-examination dated 26.03.2025, DW-1 maintained the Defendant's claim of use from the said period and asserted that the expression and artwork had been independently adopted.

46. DW-2, Sh. Lokesh Chand Yadav, Manager of Biochem Diagnostics Services produced tax invoices dated 16.05.2017, 02.06.2017, 08.06.2017, 28.07.2017 and 09.08.2017, exhibited as Ex. DW-2/1 to Ex. DW-2/5. He stated

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that he had been directed by the owner of Biochem Diagnostic to appear and that he had no personal knowledge of the affairs of the firm.

47. The defendant has also relied upon the testimony of DW-3, an examiner from the Trade Marks Registry, who produced third-party trademark applications and registrations, exhibited as Ex. DW-3/1 to Ex. DW-3/3 and Ex. DW-3/4 to Ex. DW-3/10. However, DW-3 had no personal knowledge of the actual market use of the marks in question. His testimony, therefore, merely establishes the existence of third-party applications and registrations on the Trade Marks Register, but fails to establish that the said marks are actually and extensively used in the market. Consequently, the mere existence of such entries is insufficient, by itself, to support the defendant's arguments that the word "WELLNESS" is common to the trade or descriptive of health-related services. Reliance in this regard can be placed on the judgment of Hon'ble Supreme Court ***Corn Products Refining Company Vs Shangrila Food Products Ltd*** *(supra)* wherein Hon'ble Supreme Court held in para 17:

> "…..*Now of course the presence of the mark in the register does not prove its user at all. It is possible that the mark may have been registered but not used. It is not permissible to draw any inference as to their user from the presence of the mark on the register. …*"

It is also pertinent to mention here that defendant has not examined any witness from the firms/companies using the word "WELLNESS" in their trade or business to substantiate its claim.

48. In ***Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd.***, (2001) 5 SCC 73 the Hon'ble Supreme Court enumerated the following factors for determining deceptive similarity between competing trademarks:

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"(a) The nature of the marks i.e. whether the marks are word marks or label marks or composite marks i.e. both words and label works.

(b) The degree of resemblances between the marks, phonetically similar and hence similar in idea.

(c) The nature of the goods in respect of which they are used as trade marks.

(d) The similarity in the nature, character and performance of the goods of the rival traders.

(e) The class of purchasers who are likely to buy the goods bearing the marks they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and/or using the goods.

(f) The mode of purchasing the goods or placing orders for the goods.

(g) Any other surrounding circumstances which may be relevant in the extent of dissimilarity between the competing marks."

Hon'ble Supreme Court further observed that the weight to be accorded to each factor depends upon the facts of the particular case and that equal weight need not be given to every factor. The comparison is not to be undertaken by placing the marks side by side and expecting a consumer to notice every difference. The question is whether a person of average intelligence and imperfect recollection is likely to be confused by the impugned mark in the ordinary course of trade.

49. In ***Amritdhara Pharmacy v. Satya Deo Gupta, AIR 1963 SC 449***, the Hon'ble Supreme Court held that competing marks must be considered as a whole, having regard to the overall impression they create upon a purchaser of average intelligence and imperfect recollection. The Hon'ble Division Bench of the Delhi High Court, in ***M/s South India Beverages Pvt. Ltd. v. General Mills Marketing Inc. & Anr., (supra),*** further clarified that the principle of anti-

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dissection does not preclude the Court from identifying and examining the dominant features of a composite mark, provided that the ultimate assessment is of the competing marks as a whole.

50. Most recently, the Hon'ble Supreme Court, in ***Pernod Ricard India Private Limited v. Karanveer Singh Chhabra***, **2025 INSC 981**, reiterated that the anti-dissection rule and the dominant-feature test operate in conjunction with each other. While the anti-dissection rule requires competing marks to be assessed in their entirety, the dominant-feature test permits the Court to identify and accord appropriate weight to the element most likely to attract the attention and influence the recollection of an average consumer. Identification of a dominant feature is thus an aid to holistic comparison and not a substitute for it. The ultimate inquiry remains whether the competing marks, viewed as a whole and in their commercial context, are likely to cause confusion or deception.

51. In the present case, the competing marks of plaintiffs and defendant prominently employ the word **"WELLNESS"**. The expressions "PATHCARE" and "DIAGNOSTICS" are not identical; however, in the context of diagnostic and healthcare services, both are associated with pathology, diagnostic testing and related healthcare facilities. In the Plaintiffs' mark, "WELLNESS" is displayed prominently, followed by "PATHCARE" in a different typographical treatment and colour. Similarly, the Defendant's mark prominently displays "Wellness", followed by "Diagnostic Pvt. Ltd." in a different typographical treatment. These differences must be considered alongside the common prominent element and the overall commercial impression of the competing marks.

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52. The Plaintiffs have also relied upon their artistic work comprising the expression "*wholebodycheckup.com*", other particulars of the Plaintiffs, and a stylised human figure incorporating a heart-shaped element and an ECG-like design. The Defendant's device, on the other hand, comprises a heart-shaped, apple-like figure with a stem and leaf, incorporating an ECG-like element resembling the letter "W". Thus, while the two artistic works differ in their overall composition, the Plaintiffs' artistic work depicting a stylised human figure and the Defendant's apple-like device having a stem and leaf, they share certain prominent visual features, particularly the use of heart-like forms and ECG-like elements. Although the subject mark used by the Plaintiffs and the impugned mark used by the Defendant also differ in their colour combinations, font styles and font sizes, these differences do not outweigh the substantial similarities in their device elements. The common visual features, considered alongside the use of the expression "WELLNESS" and the overlapping nature of the diagnostic services offered by the parties, are likely to create an association in the minds of consumers of average intelligence and imperfect recollection, leading them to believe that the Defendant's services originate from, or are commercially associated with, the Plaintiffs.

53. It is also pertinent to note here that both plaintiffs and defendant are providing identical services to the consumers and the nature of the services and the channels through which they are offered are also identical. The parties' respective business and website materials, exhibited as Ex. PW-1/10 (Colly.) and Ex. PW-1/11 (Colly.), indicate that both promote diagnostic services through online platforms, facilitate online booking and offer home collection of samples. Their services and modes of reaching consumers are, therefore, substantially overlapping.

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54. In ***Cadila Healthcare*** *(supra)* and ***Pernod Ricard*** *(supra)*, the principles governing the comparison of competing marks require consideration of their overall impression, with due regard to their prominent and distinctive features. The comparison is not to be undertaken by placing the marks side by side and scrutinising every difference, but from the perspective of a consumer of average intelligence and imperfect recollection.

55. The Court is conscious that the word "WELLNESS" is commonly used in the healthcare and diagnostic industry and that the Plaintiffs cannot claim an exclusive monopoly over the word in isolation. Nevertheless, the plaintiffs' case rests upon the cumulative effect of the competing marks, including their prominent common element- "WELLNESS", the accompanying expressions, the resemblance between the device elements and the nature of the services for which they are used. Having regard to these circumstances and the overlapping trading channels, the differences in the individual elements do not sufficiently dispel the likelihood of confusion or erroneous association. Accordingly, this Court is of the considered opinion that the defendant's impugned mark is deceptively similar to the Plaintiffs' mark.

56. The Plaintiffs have relied upon documentary evidence establishing use of their mark since 2011, whereas the defendant has asserted adoption of its mark in 2016–2017. The evidence on record, therefore, supports the Plaintiffs' claim of prior use. The plaintiffs have also disclosed their annual turnover in para 14 of the plaint which shows that they had an established business in the field of diagnostic and healthcare services much prior to the start of business of the defendant. In contrast, the defendant has neither disclosed its annual turnover in the written statement nor has produced any evidence to this effect. These facts

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also support the Plaintiffs' claim of established goodwill and commercial presence under the mark.

57. The aforesaid findings also bear upon the Plaintiffs' claim of passing off. The documentary evidence of prior use, considered alongside the similarities in the competing device marks and artistic work, supports the plaintiffs' claim to goodwill in their commercial presentation. The plaintiffs' use of the heart-shaped device incorporating an ECG element, in conjunction with their device mark, associates the said artistic work with their business. The Defendant's adoption of a device mark bearing similar visual features, coupled with its use of the expression **"WELLNESS"** for overlapping diagnostic services, is likely to lead consumers to believe that the Defendant's services originate from, or are commercially associated with, the Plaintiffs. Such misrepresentation is likely to cause damage to the goodwill attached to the Plaintiffs' business.

58 In ***Laxmikant V. Patel v. Chetanbhai Shah*, (2002) 3 SCC 65**, Hon'ble Supreme Court recognised that, in an action for passing off, actual damage need not be established where the likelihood of damage is demonstrated. Accordingly, the absence of proof of an actual instance of deception or quantified loss does not, by itself, defeat the Plaintiffs' claim. In the present case, the similarities in the competing device marks and artistic work, considered cumulatively with the use of the expression **"WELLNESS"** and the overlapping nature of the services offered by the parties, establish a likelihood of confusion and damage to the Plaintiffs' goodwill. The protection against passing off also serves to ensure that consumers seeking diagnostic services are not misled as to the source of such services or led to believe that the competing businesses are commercially

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connected. The Court, therefore, holds that the essential elements of passing off stand established

59. Thus, in view of the aforesaid discussion, the issues number 1 and 4 are decided in favour of the plaintiff no. 2 and against the defendant and plaintiff no. 2 is held entitled for the grant of decree of permanent injunction as prayed for.

ISSUE NO.5:

Whether the plaintiffs are entitled for decree of all the impugned goods as prayed in para-B of the prayer clause? OPP

60. That the onus to prove this issue has been cast upon the plaintiffs. However, perusal of the record would show that the plaintiffs have not led any evidence to establish the existence of any goods bearing the impugned mark in the custody, possession, control of the defendant which may be directed to be delivered. Moreover, no material has been placed on record to identify the specific goods sought to be delivered, their nature, their quality or their availability. Additionally, no application seeking the appointment of a Local Commissioner for the purpose of inspecting the Defendant's premises or identifying and seizing the alleged infringing goods was filed by the Plaintiffs.

Therefore, in the absence of any evidence, this court is not inclined to grant any decree for delivery up of the goods in favour of the plaintiffs. Accordingly, the issue is decided against the Plaintiffs and in favour of the Defendant.

ISSUE NO.6:

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Whether the plaintiff is entitled for rendition of account as stated in para-C or in the alternative a decree of Rs. 3,05,000/- as prayed in para-D of the prayer clause? OPP

61. The onus of proving this issue has been cast on the plaintiffs. This Court has already held in issue no. 1 & 4 that plaintiff no. 2 is entitled for the relief of permanent injunction on the aspect of infringement and passing off by the defendant in relation to the trademark/label/name of the plaintiff. The plaintiffs have claimed a decree of rendition of account of profits earned by the defendant. However, the plaintiffs have not led any evidence on this aspect. It is also pertinent to note here that no question has been put to DW-1 Arun Kumar on the profits earned by the defendant company nor any efforts have been made to summon the books of account of the defendant during the course of trial. Hence, in the absence of any such evidence being available on record, this court is not inclined to pass a decree of rendition of accounts against the defendant.

62. The plaintiff has further claimed damages as an alternative to the decree of rendition of accounts for the damages sustained by the plaintiffs due to the impugned act of the defendant. The question that remains before the court is whether the Plaintiff no. 2 can be awarded nominal damages in the absence of evidence quantifying the actual loss suffered by them or the profits earned by the Defendant.

63. In *Hindware Ltd. v. Grohe India Pvt. Ltd. & Ors.*, 2026:DHC:4616, the Hon'ble Delhi High Court recognised that the Court is empowered to award nominal damages even where the actual quantum of damages cannot be substantively established. The Court also considered the decision of the Division

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Bench in ***Oxygun Health Pvt. Ltd. v. Pneumo Care Health Pvt. Ltd.*, 2025:DHC:3897-DB**, wherein it upheld the award of nominal damages, observing that the approach adopted by the Commercial Court followed the principle of "compensatory damages" as against actual damages, where egregious infringement or passing off is found to have taken place. The aforesaid approach draws upon the principles laid down by the Hon'ble Delhi High Court in ***Koninklijke Philips N.V. v. Amazestore & Ors.*, 2019:DHC:2185**, wherein, the Hon'ble Delhi High Court explained that the assessment of damages must take into account the nature and degree of the infringing conduct.

64. The aforesaid judgments thus recognise that the inability to quantify actual loss does not invariably preclude an award of nominal damages where infringement has been established. At the same time, the nature and quantum of damages must be determined having regard to the circumstances of each case, including the degree of knowledge, mala fides and deliberateness underlying the infringing conduct. The thumb rule laid down in ***Koninklijke Philips*** (supra) is, therefore, a guiding framework for a proportionate assessment and not a formula for mechanically determining the amount of damages.

65. In the present case, although no evidence has been led to establish the Defendant's sales, profits or the precise loss suffered by the Plaintiff no. 2, this Court has found that the Defendant's use of the impugned mark infringes the rights of plaintiff no. 2 and amounts to passing off. The absence of evidence quantifying actual loss does not, by itself, extinguish the entitlement of plaintiff no. 2 to nominal damages. However, in the absence of a reliable evidentiary basis for calculating substantial damages, the amount claimed by the Plaintiffs cannot be awarded in its entirety merely on the basis of the findings of infringement and

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passing off.

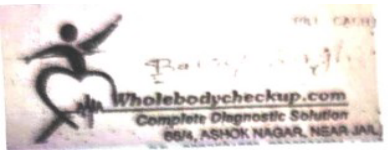
66. Accordingly, having regard to the principles laid down in ***Hindware Ltd. (supra)***, ***Oxygun Health Pvt. Ltd.(supra)*** and ***Koninklijke Philips N.V.(supra)***, this Court considers it appropriate to award nominal damages of **Rs. 2,00,000/-** in favour of the Plaintiff no. 2. The claim for damages beyond the aforesaid amount is declined. This issue is decided in favour of the Plaintiff no. 2 to the aforesaid extent.

Relief

67. In view of my findings on the issues herein above, the suit is decreed in favour of the plaintiff no. 2 and against the defendant with costs. The suit stands dismissed qua plaintiff no. 1 for the want of authority to maintain the suit.

68. A decree of permanent injunction is passed in favour of the plaintiff no. 2 and against the defendant restraining the Defendant, his distributors, dealers, stockists, retailers, servants, agents and all others acting for and on his behalf from using, displaying, advertising or in any o ther manner providing health care, medical diagnostics and pathological services under the impugned trademark/label/name "*WELLNESS DIAGNOSTICS*" and domain name "www.wellnessdiagnostics.in" including the device mark / logo 

or any other trademark/label/name identical or deceptively similar to the plaintiff's trademark/label/name "**WELLNESS PATHCARE**" and the device mark / logo/ artistic work : 

and 

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in any manner whatsoever without the permission, consent, license of the Plaintiff no. 2 thereby infringing the rights of the Plaintiff no. 2 in its registered trademarks amounting to infringement thereof and doing any other acts or deed amounting to infringement of the plaintiff no.2's registered trademarks as well as passing off.

69. The defendant is directed to pay damages of Rs.2,00,000/- to the plaintiff no. 2 within one month from the passing of this judgment failing which, said amount shall carry simple interest @ 9% p.a. from date of decree, till realization. Plaintiff no. 2 shall also be entitled to proportionate costs of suit.

Decree sheet be prepared accordingly.

File be consigned to Record Room after necessary compliances.

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Announced in the open Court on **29.10.2026**

(**ANIL KUMAR SISODIA**)
DISTRICT JUDGE (COMMERCIAL COURT)-03,
CENTRAL, TIS HAZARI COURTS, DELHI

IN THE COURT OF SH. ANIL KUMAR SISODIA:
DISTRICT JUDGE (COMMERCIAL COURT)-03: CENTRAL:
TIS HAZARI COURTS: DELHI.

CNR NO. DLCT010172012021
CS (COMM) 5232/2021

Wellness Pathcare India LLP & Anr.

……..Plaintiffs

Versus

Wellness Diagnostics Pvt. Ltd.

…….Defendant

As per practice directions No. 200/Rules/DHC dated 07.9.2026 issued by the Hon'ble Delhi High Court Form 'A' is annexed as under:

FORM 'A'

(CIVIL CASES)

LIST OF WITNESSES

S.No.	Name of Witness	Whether witness of plaintiff or defendant
1.	PW1: Ram Charan Tyagi	Plaintiffs
2.	PW2: Mrs. Reena Tyagi	Plaintiffs
3.	PW3: Sh. Avkash Kumar	Plaintiffs
4.	PW4: Baljit Singh	Plaintiffs
5.	PW5: Sh. Sanjay Thirwani,	Plaintiffs
6.	DW1: Sh. Arun Kumar	Defendant
7.	DW2: Sh. Lokesh Chand Yadav	Defendant

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8.	DW3: Sh. Suhail Malik	Defendant

LIST OF DOCUMENTS

S. No.	Exhibit/Mark	Date of Exhibit	Description of Exhibit
1.	Ex.PW-1/1A (colly)	27.03.2024	Trademarks status and Journal page of trademark application no. 2236752 (running into 3 pages)
2.	Ex.PW-1/1B (colly)	-do-	Trademarks status and certificates, Journal page of trademark application no. 3218493 (running into 4 pages)
3.	Ex.PW-1/2 (colly)	-do-	LPC of the registered trademark of trademark application no. 2236752 (running into 2 pages)
4.	Ex.PW-1/3	-do-	Status of trademark of defendant under application no. 3313054
5.	Mark A (colly)	-do-	Partnership Deeds of the plaintiff no. 2 (running into 7 pages)
6.	Ex. PW-1/4 (colly)	-do-	LLP Agreement of plaintiff no. 1 (running into 12 pages)
7.	Ex. PW-1/5	-do-	Company Master data of plaintiff no. 1
8.	Mark B (colly)	-do-	Details of company wise collection (running into 5 pages)
9.	Ex. PW-1/6	-do-	Purchase invoice dated 31.07.2015
10.	Mark C (colly)	-do-	Purchase Invoices (running into 14 pages)
11.	Ex. PW-1/7A	-do-	Invoice of the plaintiff for service rendered dated 7th April 2017
12.	Ex. PW-1/7B	-do-	Invoice of the plaintiff for service rendered dated 1st January 2018

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13.	Ex. PW-1/7C	-do-	Invoice of the plaintiff for service rendered dated 3rd January 2015
14.	Ex. PW-1/7D	-do-	Invoice of the plaintiff for service rendered dated 4th February 2016
15.	Ex. PW-1/7E	-do-	Invoice of the plaintiff for service rendered dated 6th March 2017
16.	Ex. PW-1/7F	-do-	Invoice of the plaintiff for service rendered dated 4th January 2018
17.	Ex. PW-1/7G	-do-	Invoice of the plaintiff for service rendered dated 6th February 2018
18.	Ex. PW-1/7H	-do-	Invoice of the plaintiff for service rendered dated 11th April 2020
19.	Ex. PW-1/7I	-do-	Invoice of the plaintiff for service rendered dated 2nd June 2021
20.	Ex.PW-1/8A (colly)	-do-	Income Tax Return of the year 2018-19 (running into 3 pages)
21.	Ex.PW-1/8B (colly)	-do-	Income Tax Return of the year 2017-18 (running into 3 pages)
22.	Mark D (colly)	-do-	E-receipts under CST, Income Tax Return, Balance Sheet & Profit Loss Account as Mark D (colly) (running into 28 pages)
23.	Mark E (colly)	-do-	Legal Notice issued to the defendant dated 24.08.202 (running into 9 pages)
24.	Ex. PW-1/9	-do-	Company Master Data of defendant
25.	Mark F	-do-	Resolution
26.	Ex.PW-1/10 (colly)	-do-	Webpage (running into 12 pages)
27.	Ex. PW-1/11 (colly)	-do-	Webpages of defendant (running into 8 pages)
28.	Ex. PW-1/12	-do-	Order passed by Ld. DJ

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	(Same is de-exhibited as same is not on record)		recognizing the right of the plaintiff in the trademark Wellness Pathcare by granting ex-parte and Interim Injunction as Ex. PW-1/12
29.	Ex.PW-1/13 (colly)	-do-	Doctor prescription of Reena Tyagi, cash receipt issued by defendant's sample collection personnel and the test report issued by defendant (running into 15 pages)
30.	Ex.PW-1/14	-do-	Complaint filed in police in police station Hari Nagar regarding misuse of the name of the plaintiff in order to solicit the patient
31.	Ex.PW-1/15	-do-	List of Suspended labs including defendant dated 13.07.2022 issued by NABL
32.	Ex.PW-1/16	-do-	Certificate under Section 65 B of Indian Evidence Act
33.	Ex.PW-3/1 (colly).	08.07.2024	Income tax returns of Wellness Pathcare having PAN No. AABFW4262D for the year 2012-13 to 2023-24
34.	Ex.PW-4/1 (colly).	08.07.2024	Account statement in the name of Wellness Pathcare having current account no. 32581408362 from March 2013 till date
35.	Ex.PW-5/1	29.07.2024	Subscriber post connection details qua telephone no. 25551062 in the name of Wellness Pathcare, installed on

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			07.02.2013
36.	Ex.PW-5/2	-do-	Certificate u/s 65 B of Indian Evidence Act
37.	Ex.PW-5/3	-do-	Authority letter
38.	Mark A	26.03.2025	Copy of certificate of incorporation of defendant
39.	Mark B	-do-	Copy of memorandum of association of defendant
40.	Ex. DW-1/3	-do-	Copy of Defendant's company PAN Card
41.	Mark C	-do-	Copy of medical test report having eight pages, of patient named as Sh. A.K. Malhotra issued by defendant
42.	Ex. DW-1/P1	-do-	Print out of the pages taken from website of the defendant
43.	Mark D-1	-do-	Test report of patient Fagu Yadav dated 16.11.2023
44.	Mark D-2	-do-	Test report of patient Mukesh Kumar dated 14.02.2024
45.	Mark D-3	-do-	Photocopy of photograph of Test Request Form
46.	Ex. DW-2/1	14.05.2025	Tax invoice no. 494 dated 16.05.2017
47.	Ex. DW-2/2	-do-	Tax invoice no. 673 dated 02.06.2017
48.	Ex. DW-2/3	-do-	Ex. invoice no. 720 dated 08.06.2017
49.	Ex. DW-2/4	-do-	Tax invoice no. 1296 dated 28.07.2017
50.	Ex. DW-2/5	-do-	Tax invoice no. 1616 dated 19.08.2017
51.	Ex. DW3/1	05.06.2025	LPC having trademark Wellness

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			bearing registration no. 2126841 in Class 44
52.	Ex. DW3/2	-do-	LPC having trademark Wellness bearing registration no. 214357 in Class 44
53.	Ex. DW3/3	-do-	LPC having trademark Wellness bearing registration no. 1967981 in Class 99
54.	Ex. DW3/4	-do-	Copy of application having trademark Wellness bearing registration no. 3967830
55.	Ex. DW3/5	-do-	Copy of application having trademark Wellness bearing registration no. 2078874
56.	Ex. DW3/6	-do-	Copy of application having trademark Wellness bearing registration no. 4357468
57.	Ex. DW3/7	-do-	Copy of application having trademark Wellness bearing registration no. 2986756
58.	Ex. DW3/8	-do-	Copy of application having trademark Wellness bearing registration no. 2219210
59.	Ex. DW3/9	-do-	Copy of application having trademark Wellness bearing registration no. 3193993
60.	Ex. DW3/10	-do-	Copy of application having trademark Wellness bearing registration no. 2209663

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(ANIL KUMAR SISODIA)
District Judge (Commercial Court)-03,
Central District, Tis Hazari Courts, Delhi.
29.10.2026