* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved on*: 18.12.2025*
Judgment delivered on*: 16.02.2026*
Judgment uploaded on*: As per Digital Signature*

\+ **FAO(OS) (COMM) 45/2024**

LOTUS HERBALS PRIVATE LIMITED

..... APPELLANT

versus

DPKA UNIVERSAL CONSUMER VENTURES PRIVATE LIMITED & ORS

..... RESPONDENTS

Advocates who appeared in this case

For the Appellant : Mr. Chander M. Lall, Senior Advocate with Mr. Vaibhav Vutts, Ms. Aamna Hasan, Ms. Aarya Deshmukh and Ms. Vaibhavi SG, Ms. Annanya Mehan, Advocates.

For the Respondents : Mr. Dayan Krishnan, Senior Advocate with Mr. Pravin Anand, Mr. Ameet Naik, Mr. Dhruv Anand, Ms. Madhu Chaudhary, Ms. Udita Patra, Mr. Sanjeevi Seshadri, Ms. Nimrat Singh, Mr. Dhananjay Khanna, Ms. Bhavya Verma, Advocates for R1 & R2.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

V. KAMESWAR RAO, J.

CM APPL. 25782/2024(condonation of delay in filing reply to the present appeal)

1. For the reasons stated in the application, the delay of 35 days in filing reply of the respondents in compliance of order dated 12.03.2024, is condoned.

2. The application is disposed of.

CM APPL. 25783/2024

3. For the reasons stated in the application, we allow this application and treat their reply to the appeal as their counter affidavit which was directed vide order dated 12.03.2024.

4. The application is allowed and disposed of.

FAO(OS) (COMM) 45/2024 CM APPL. 14991/2024

5. This appeal has been filed with the following prayers:-

> *"a) Set aside the impugned order dated 25.01.2024 and that during the pendency of the suit the Hon'ble Court may be pleased to pass the order restraining the defendants, their directors, partners, owners, dealers, distributors, agents, stockiest and servants, employees, assigns and all other persons acting on their behalf from manufacturing, selling, importing, exporting, offering for sale, advertising, directly or indirectly dealing in Cosmetics, Beauty and Hygiene products under the impugned trade mark LOTUS SPLASH or LOTUS derivative marks or any other identical and/or deceptively similar trade marks to that of the plaintiffs trade mark being LOTUS whether being used independently or with any prefix or suffix till the disposal of the suit.*
>
> *b) Any such further order as this Court may deem fit and appropriate in the present facts and circumstances of the present case be passed in favour of the Appellant and against the Respondents."*

6. This appeal impugns order dated 25.01.2024 passed by the learned Single Judge dismissing I.A. 12308/2023 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC) in the suit CS (COMM) 454/2023. The appellant/plaintiff being aggrieved by the dismissal of the said application has preferred this appeal.

7. We also note that vide Order dated 11.12.2025 this Court had allowed an application for deletion of M/s. Intercos India Pvt. Ltd. as respondent no.3 from the array of parties while recording the concurrence of the counsel for the appellant on instructions.

FACTUAL BACKGROUND

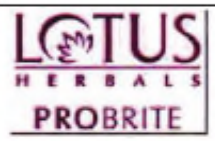
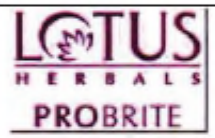
8. The facts as noted from the impugned judgment state that the appellant is the owner and proprietor of the mark "Lotus" and has registrations in classes 3 and 5 with 55 registered trade marks with various designs and devices with the earliest trade mark, registration going back to 02.08.1996. They are also registered owners of a copyright in the logo of the company, registered with Registration No. A-97661/2013, with effect from 10.02.2011. As per the appellant/plaintiff they have a significant amount of goodwill and reputation in the market with sales figures for the years 2021-22 and 2022-23 crossing the figure of approximately Rs. 529 *crores* and Rs. 695 *crores*, respectively. The appellant has also spent significant amounts on advertising and promotion with expenditure ranging for approximately Rs. 103 *crores* and Rs. 98 *crores* for the years 2021-22 and 2022-23 respectively. The appellant who is the owner and operator of the said mark runs a website being www.lotusherbals.com. As per the appellant they have also been sponsors of various events and programs including the sponsors of

the IPL Cricket Team Kings XI Punjab for the period 2017-23. The details of the registered marks of the appellant are as under:-

S. No.	Trade Mark	Word/ Device	Trade Mark No.	Date of filing	Class
1.		Device	711932	1996.08.02	5
2.		Device	711934	1996.08.02	3
3.	LOTUS	Word	1123692	2002.08.02	3
4.	LOTUS	Word	1123693	2002.08.02	5
5.	LOTUS HERBALS PROFESSIONAL	Word	1423171	2006.02.21	5
6.	LOTUS HERBALS PROFESSIONAL	Word	1423176	2006.02.21	3
7.		Device	1451464	2006.05.08	3
8.		Device	1451465	2006.05.08	5
9.	LOTUS SUNSAFE	Word	1967373	2010.05.18	5
10	LOTUS GLOWHITE	Word	1967374	2010.05.18	3
11		Device	2322460	2012.04.26	3

12		Device	2322462	2012.04.26	5
13	Lotus Organics+	Word	2633760	2013.11.27	3
14	Lotus Organics+	Word	2633761	2013.11.27	5
15		Device	2769531	2014.07.08	3
16	LOTUS SAFE SUN	Word	3008852	2015.07.15	3
17	LOTUS SAFE SUN	Word	3008853	2015.07.15	5
18	LOTUS WHITE GLOW	Word	3008855	2015.07.15	5
19	LOTUS ECOSTAY	Word	3008856	2015.07.15	3
20	LOTUS ECOSTAY	Word	3008857	2015.07.15	5
21	LOTUS COLORKICK	Word	3008858	2015.07.15	3
22	LOTUS COLORKICK	Word	3008859	2015.07.15	5
23	LOTUS YOUTHRX	Word	3008861	2015.07.15	5
24	LOTUS PROFESSIONAL PHYTO RX	Word	3008862	2015.07.15	3
25		Device	3008866	2015.07.15	3
26		Device	3008867	2015.07.15	5

27		Device	3008868	2015.07.15	3
28		Device	3008869	2015.07.15	5
29		Device	3008870	2015.07.15	3
30		Device	3008871	2015.07.15	5
31		Device	3008872	2015.07.15	3
32		Device	3008873	2015.07.15	5
33		Device	3406127	2016.11.08	3
34		Device	3406128	2016.11.08	3
35		Device	3406130	2016.11.08	3
36		Device	3561211	2017.06.01	3
37		Device	3561212	2017.06.01	5

38		Device	3656610	2017.10.13	3
39		Device	3656611	2017.10.13	5
40	LOTUS HERBALS BABY +	Word	3656693	2017.10.13	3
41	LOTUS HERBALS BABY +	Word	3656694	2017.10.13	5
42		Device	3732456	2018.01.20	3
43		Device	3732457	2018.01.20	5
44		Device	3817448	2018.04.26	3
45		Device	3817449	2018.04.26	5
46		Device	3843467	2018.05.25	3
47		Device	3843468	2018.05.25	5
48		Device	4585414	2020.07.28	3

49	LOTUS BOTANICALS	Device	4585539	2020.07.28	5
50	LOTUS PROFESSIONAL PROMEN	Device	4614971	2020.08.19	3
51	LOTUS PROFESSIONAL PROMEN	Device	4614972	2020.08.19	5
52	LOTUS HERBALS Lip Therapy	Device	4650261	2020.09.10	3
53	LOTUS HERBALS Lip Therapy	Device	4650262	2020.09.10	5
54	LOTUS MAKE-UP	Device	5336638	19.02.2022	3
55	LOTUS MAKE-UP	Device	5336640	19.02.2022	5

9. In the present case the appellant is aggrieved by the usage of the words “Lotus Splash” (as alleged by the respondents) by the respondents for their product which is a face cleanser. As per the appellant the use of the term “Lotus Splash” by the respondents would amount to infringement of the appellant’s formative mark under the Trade Marks Act, 1999 (the Act). The products of the respondents are being sold in physical stores as well as online through the website www.82e.com under the umbrella mark “82°E”.

The appellant had issued a notice to the respondents dated 06.02.2023 asking the respondents to stop using the mark "Lotus Splash" for its products. The product of the respondents/defendants, which is a facial cleanser/face wash is depicted below:-



10. It was thereafter, that the appellant instituted the suit against the respondents seeking permanent injunction in order to prevent the respondents from using "Lotus" as a part of their mark. Along with the said suit the appellant also filed an application under Order XXXIX Rule 1 and 2 of the CPC. The learned Single Judge dismissed the application for temporary injunction filed by the appellant/plaintiff in favor of the respondents/defendants vide the impugned judgment dated 25.01.2024.

11. We deem it appropriate to refer to the arguments advanced by the parties before the learned Single Judge which can be summarised as under:-

a) The respondents, as per the case of the appellant were using the mark "Lotus" in conjunction with the word "Splash" for similar products which are bound to cause confusion in the minds of the general public.

b) It was the case of the appellant that the respondents were aware

of the appellant's mark "Lotus" and even then went on to use the same for their own products.

c) The products of the parties for the sake of analogy are depicted below:-

Product of appellant/ plaintiff	Product of respondent no. 1/ defendant no. 1
 	

d) They argued that the respondents/defendants being proprietors of the brand "82°E", sell many products such as "Ashwagandha Bounce", "Turmeric Shield", "Licorice Beam", "Gotu Kola Dew", "Patchouli Glow" along with the product in question being "Lotus Splash".

e) As per the appellant the respondents have applied for registration of trade marks for the other products but not for "Lotus Splash".

f) The respondents had concealed the fact that the respondents had in fact applied for registration of their marks "Ashwagandha Bounce", "Turmeric Shield", "Licorice Beam", "Gotu Kola Dew" and "Patchouli Glow". The list of the products of the respondents is as under:-



g) The appellant/plaintiff stated that even if one were to examine the product of the respondents/defendants it would be clear that the term "Lotus Splash" is used as a trade mark and the mark of the respondents/defendants "82°E" finds mention at the base of the bottle. The descriptive part of the product which states

"*conditioning cleanser with lotus and bioflavonoids*" also finds mention on the bottle. They also referred to an invoice dated 29.05.2023 to state that the impugned product is sold as "*Lotus Splash conditioning cleanser*" and there is no reference to "82°E".

h) On the aspect of confusion the appellant/plaintiff stated that when a Google search is conducted for the term "Lotus" both the products of the appellant/plaintiff and respondents/ defendants are to be seen. On the Instagram page of the respondents/defendants it could be seen that the impugned product was being sold as "Lotus Splash".

i) The stand of the appellant/plaintiff was that the only aspect which may be treated as descriptive would only be the term "Lotus" and the mark in the present case cannot be protected under Section 30(2)(a). The tests which decide whether a mark is descriptive or suggestive is the degree of imagination required to connect the mark with the product and the competitor's need to use the mark. It was contended that the words used in Section 30(2)(a) are the same as in Section 9(1)(b) and therefore, if the argument of the respondents/defendants is accepted then they would be able to register "Lotus Splash" as a trade mark by claiming that the same has acquired reputation and secondary meaning over time.

j) The respondents/defendants have maintained that the use of the

term “Lotus Splash” in a descriptive sense of the words, since the product of the respondents/defendants contains lotus extracts and is indicative of its constituents.

k) The case of the respondents/defendants was also that the advertisement of the product clearly indicates that the product contains lotus extracts and hence the term “Lotus Splash” is an indication of the same and thereby the protection of Section 35 of the Act, should also the applicable to the respondents/ defendants.

l) Even if the product of the respondents/defendants were registered as a trade mark even then there could not be an estoppel against the respondents/defendants in the present case.

m) The appellant/plaintiff maintained that the mark “Lotus Splash” cannot be regarded as descriptive but at the highest level is suggestive and thereby does not entitle the respondents for benefits under Section 30(2)(a); as according to them the face wash is not required to contain lotus and for the consumer, the point of reference is the name of the mark and not its ingredients.

n) On the issue of concealment of fact that the respondents/defendants had in fact applied for registration of trade marks for their products “Patchouli Glow”, “Turmeric Shield” and “Licorice Beam”, the defendants/respondents stated that the same was an error committed by their advocates

while filing the said affidavit. Since they had applied for registration of the said marks they could not take a stand that the term "Lotus Splash" is a descriptive phrase.

o) The placing of the term "Lotus Splash" *vis-a-vis* "82°E" on the packaging would show that prominence is being given to the former, as a mark and there would be a high probability of initial interest confusion in the mind of the average consumer.

12. The learned Single Judge in the impugned judgment while dismissing the application under Order XXXIX Rule 1 and 2 of the CPC by the appellant/plaintiff has held as under:-

I. The fundamental pre-requisites of Section 29 stood satisfied. The appellant/plaintiff does not possess registration for the mark "Lotus Splash" among its registered trade marks. The impugned judgment deals with the case of the appellant/plaintiff under Section 29 as well as its sub-sections. The impugned judgment while analysing the case of the appellant/plaintiff noted that the present case could be narrowed down to the applicability of Section 29(2)(b) of the Act.

II. The triple test required to return a finding of infringement within the meaning of Section 29(2)(b) states; firstly, the rival marks must be similar; secondly, they must be used in respect of similar or identical products or services and; thirdly, whether the combination of the above two factors creates a

likelihood of confusion in the mind of the average consumer believing that there is an association between the marks. The impugned judgment notes that the mark "Lotus Splash" is covered under this test. The term "Lotus" forms the dominant part of the mark "Lotus Splash" which would lead the average consumer to form an association or a link between the mark of the appellant/plaintiff and that of the respondents/defendants. The Court was of the view that there is bound to be confusion in the mind of the average consumer at least at an initial impression especially since both the marks predominantly feature the term "Lotus". Further it was held that since the appellant/plaintiff had a registration in the entire mark which is contained in the name of the defendants/respondents there would be a clear possibility of confusion which may not be mitigated by the surviving differences. The Court was of the view that there was a *prima facie* likelihood of confusion in the present case.

III. On the aspect of whether the said infringement falls under the exemption of Section 30(2)(a) or not, the learned Single Judge was of the opinion that the wording of Section 30(2) was to be read in a manner that the term "*indicates*" along with the phrase "*or other characteristics of goods or services*" would mean that this was a reference to a particular aspect of goods or services. Therefore, if a registered mark is used by a third party in such a manner that the use indicates the kind, quality,

quantity, intended purpose, value, geographical origin, time of production of goods or of rendering of services or other characteristics of the goods, the same would be covered under Section 30(2)(a).

IV. The learned Single Judge did not agree with the submission that the test of degree of imagination and competitor's need would not be attracted. The learned Single Judge was of the view that the Trade Marks Act, 1999 was a self contained codified statute. The impugned judgment held that the scope of the word 'indicate' can be narrowed down in a manner that exhibits the absence of any other indication to the contrary in the Act and the same has to be read in its full scope and effect.

V. It has been noted in the impugned judgment that the defendant has the option of taking the defence as per Section 30(2)(a) to state that the impugned mark is only indicative of one or more of the features as indicated in the abovementioned section and the same would not be seen as an infringement of the mark. Although, the same has to be adjudicated by examining the mark vis-à-vis the goods or services in respect of which it is being used. The learned Single Judge commented that the competitor's need test or the degree of imagination test, may be helpful but it is not necessary for the Courts to take recourse to the same.

VI. On the issue of suppression of material facts by the

respondents/defendants regarding the registration of the marks for the other products is concerned, the learned Single Judge held that the present dispute did not concern the said products/marks being "Licorice Beam", "Turmeric Shield", "Gotu Kola Dew", etc., and the dispute pertains to the mark "Lotus Splash" and since the respondents/defendants have not applied for a registration of the said mark, there could not have been any estoppel against invoking the defence under Section 30(2)(a) of the Act.

VII. The learned Single Judge came to the conclusion that the term "Lotus Splash" clearly indicates that the product contains lotus flower extracts as a key ingredient and the respondents/defendants would be entitled to the benefit under Section 30(2)(a) of the Act and that the said term cannot be held as being suggestive.

VIII. The distinction between the mark being either suggestive or descriptive was not held by the learned Single Judge to be of a great significance since the wording of Section 30(2)(a) of the Act includes the words "kind", "quality" and "other characteristics" as an indication of the quality/characteristic of the product, which in this case is the lotus flower extract. The learned Single Judge also noted the fact that bottle of the respondents'/defendants' product contained the term "*conditioning cleanser with lotus and bioflavonoids*", which justifies the use of the term "Lotus Splash" to convey to the

mind of the average consumer, who would be influenced by the description which immediately follows below the said mark. The learned Single Judge was of the opinion that the gaze of the average consumer would fall equally on "Lotus Splash" as also on the descriptive explanation below to convey to the consumer that the key component of the said product is Lotus extract.

IX. The learned Single Judge in the impugned judgment also noted that for the defence of Section 30(2)(a) of the Act to be available, the mark only needs to contain one or more of the factors envisaged in the clause. Given the prominence of Lotus extract as the ingredient in the impugned product, it was noted that the respondents/defendants were entitled for the said defence.

X. The impugned judgment noted that at a *prima facie* stage, it could be seen that the products of the appellant/plaintiff was different from those of the respondents/defendants and that the latter had made out a case for protection under Section 30(2)(a) of the Act.

XI. If the product of the respondents/defendants is seen in light of the range of their other products, it can be noted that the impugned product "Lotus Splash" is not the odd mark out since all the products of the respondents/defendants contain the key ingredient as a descriptor along with another word, which

is indicative of its said quality such as "Turmeric" with "Shield" used as a suffix since it is known to have antiseptic properties and the term "Patchouli" used with "Glow" as a suffix to indicate that the patchouli extract is a sunscreen and thereby justifying the use of the term "Glow". Even though the learned Single Judge noted that some products such as "Licorice Beam" and "Gotu Kola Dew" do not indicate any immediate connection. Although, the term "Lotus Splash" falls in the former category according to the learned Single Judge and is not only indicative of the constituent of the product but also the fact that it is a facial cleanser which is infact to be splashed on the face, hence, justifying the use of the term "Lotus Splash" as a descriptor. The use of the said term is hence neither a coincidence nor an attempt to confuse the consumers.

XII. On the other hand, it was opined by the learned Single Judge that the product of the respondents/defendants contained enough distinguishing features such as the term "Lotus" being used in conjunction with the term "Splash" as well as the fact that the trademark of the respondents/defendants "82° E" finds mention on the lower edge of the bottle. If the product of the appellant/plaintiff and respondents/defendants were kept next to each other in the same store and compared to each other, the consumer would immediately be able to identify the differences between the two products and the consumer would

focus on the mark of the respondent no. 1 being "82° E" as well as the packaging, which shows a complete dissimilarity in appearance as well as the price. A consumer, who is a regular purchaser of such products, would know the difference between both the marks.

XIII. The impugned judgment records while dismissing the application for temporary injunction that there was no *prima facie* case made out for infringement.

13. On the issue of whether the exemption under Section 30(2)(a) and Section 35 of the Act are applicable to the respondents or not, the learned Single Judge came to the conclusion that the respondents were entitled to the said exemption as the respondents have used the term "Lotus Splash" as an indicator of "kind" and "quality" of the respondents' product. The learned Single Judge accepted the argument of the respondents that the product is indicative of the ingredient and thereby the characteristics of the product and hence cannot be regarded as infringing in nature.

SUBMISSIONS ON BEHALF OF THE APPELLANT

14. Mr. Chander M. Lall, learned Senior Counsel for the appellant appearing with Mr. Vaibhav Vutts has contended that the appeal assails the impugned order dated 25.01.2024 of the learned Single Judge wherein the appellant despite holding the registration of the mark "Lotus" finds its mark being infringed by the respondent nos. 1 & 2 under Section 29 of the Act. It is the case that according to the learned Single Judge, Section 29(1) of the Act is applicable only when the infringing mark is identical to that of the

original registered mark, which in this case is the mark of the appellant. He stated that a bare reading of Section 29(1) of the Act shows that the provisions apply both to identical or deceptively similar marks and the learned Single Judge in fact did arrive at a finding that the mark "Lotus Splash" was deceptively similar to the appellant's mark "Lotus" and that Section 29(1) of the Act should have been applied.

15. As per Mr. Lall, by jettisoning the provisions of Section 29(1) of the Act, the impugned order fails to consider the fact that the manner of the use of the mark "Lotus Splash" by the respondents is in fact use of the mark in a trademark sense. This is evident from the manner of the use of the mark "Lotus Splash", which is displayed in a prominent and distinctive manner, which is being used as a clear functioning source identifier and a badge of origin.

16. The recourse to Section 30(2)(a) of the Act would be misplaced in this context and cannot be read in isolation from the other provisions of the Act. The interpretation of Section 30(2)(a) of the Act must be done in a purposeful manner where the settled positions of prior extensive use, sales, advertisements, popularity and legal actions have to be taken into view which according to Mr. Lall have not been done in this case. Such a wide interpretation of Section 30(2)(a) of the Act would render well settled positions of prior extensive use as being disregarded and would entail that any infringer trying to claim the mark could do so by claiming the same to be indicative. According to him, the impugned judgment has erred in law while applying Section 30(2)(a) of the Act on the infringing mark "Lotus Splash", which has to be considered as only a descriptive phrase without

dovetailing the trade mark with other materials such as the description under the trade mark, along with the contents of the respondent no. 1's website and advertisement. According to Mr. Lall, the reliance placed on the judgment in the case of ***Zydus Wellness Products Limited v. Cipla Health Ltd. and Another, 2023 SCC OnLine Del 3785***, the learned Single Judge departed from his own findings and did not consider the fact that in the said judgment, it had been held that the infringing mark has to be seen as is *de hors* any other additional material on the packaging.

17. Mr. Lall would contend that the impugned order is contrary to the provisions of Section 30(2)(a) of the Act wherein the mark must be considered in its entirety for the same to fall within the said exception. The dissection of the mark is not permissible for one to avail the benefits of Section 30(2)(a) of the Act. The impugned judgment has faltered by dissecting the mark and considering the word "Lotus" separately as indicative of the component of the product and ignoring the term "SPLASH" in the infringing trade mark. It is his case that the mark must not be dissected and the same is a well settled position of law.

18. Mr. Lall has argued that the impugned judgment ought to be considered bad in law as the same has acknowledged the intentions and concealment of material by the respondents and has recorded that the respondents have in fact applied for five trade marks being "Turmeric Shield", "Licorice Beam", "Ashwagandha Bounce", "Gotu Kola Dew" and "Patchouli Glow" but not the trade mark "Lotus Splash". The respondents in their affidavit dated 11.07.2023 stated that the said term was used in a descriptive fashion and then consolidated their position in the affidavit dated

08.08.2023. This as per the case of the appellant is an act of deliberate concealment and clear evidence that the use of mark "Lotus Splash" is in a trade mark sense just as the use of the other marks by the respondents. He stated that the impugned judgment on one hand stated that the other marks such as "Turmeric Shield" etc., are not relevant and then, on the other hand, goes on to state that the marks which have been applied for reveal an interesting feature.

19. The appellant is of the view that the impugned order has also ignored the principles of passing off which as per Section 27 of the Act is an entirely separate remedy and the defence under Section 30(2)(a) of the Act would not be available. Mr. Lall has couched this assertion on the fact that the trade mark of the appellant has tremendous reputation with the use of trade mark "Lotus" being used over a period of 30 years and with sales running upwards of Rs.500 *crores* with many successful legal action against third party violations along with many celebrity endorsements. He stated that the appellant has also sponsored various Indian Premier League tournaments including the first ever Women Premier League in 2023.

20. According to him, the learned Single Judge has come to a finding that there is bound to be confusion and deception if the mark "Lotus" is used and based on this finding alone, the remedy of passing off should have been a logical consequence to the said findings. In this regard, he has placed reliance on the judgment in the case of ***Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73***.

21. According to him, the learned Single Judge has ignored the large

goodwill of the appellant and has given a *carte blanche* to third parties for the use of the word "Lotus" under the settled principles of law. Lastly, Mr. Lall was of the opinion that the learned Single Judge has in fact returned a finding of deception on a *prima facie* basis and even then refused the injunction. It is his case that the balance of convenience is in favour of the appellant as the respondent admittedly has other brands, however, the appellant is owner and proprietor of single brand i.e., "Lotus". He stated that the appellant is a prior user of the said mark since the respondents have only used the said mark only after January, 2023 and thereby, causing an irreparable injury to the appellant, the damages of which cannot be reconciled. If the use of the said mark was in fact allowed to be continued then it would give an opportunity to various other third parties to start using the formative mark "Lotus" under the garb of descriptive use citing "Lotus" as being an ingredient. The same would lead to the dilution of the well known mark "Lotus" of the appellant and the goodwill and reputation built over the years would be turned to naught.

22. In support of his submission Mr. Lall has relied on the following judgments:-

(i) ***Corn Products Refining Co. v. Shangrila Food Products Ltd., 1959 SCC OnLine SC 11;***
(ii) ***Amritdhara Pharmacy v. Satya Deo Gupta, 1962 SCC OnLine SC 13;***
(iii) ***Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceuticals Laboratories, 1964 SCC OnLine SC 14;***
(iv) ***Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73;***
(v) ***S. Syed Mohideen v. P. Sulochana Bai, (2016) 2 SCC 683;***
(vi) ***Godfrey Philips India Ltd. v. Girnar Food & Beverages (P)***

Ltd., (2004) 5 SCC 257;

(vii) ***Mohd. Rafiq and Ors. Vs. Modi Sugar Mills Ltd. AIR 1972 Delhi 46;***

(viii) ***Marico Ltd. v. Agro Tech Foods Ltd. 2010 SCC OnLine Del 3806 (2);***

(ix) ***Piruz Khambata & Anr. Vs. Soex India Pvt. Ltd. & Ors. 2011 SCC OnLine Del 5598;***

(x) ***Hem Corpn. Pvt Ltd. v. ITC Ltd., 2012 SCC OnLine Bom 551;***

(xi) ***Procter & Gamble Manufacturing (Tianjin) Co. Ltd. v. Anchor Health & Beauty Care Pvt. Ltd, 2014:DHC:2936-DB= 2014 SCC OnLine Del 3374;***

(xii) ***Jagdish Gopal Kamath v. Lime & Chilli Hospitality Services, 2015 SCC OnLine Bom 531;***

(xiii) ***Anil Verma v. R.K. Jewellers SK Group, 2019 SCC OnLine Del 8252 (2);***

(xiv) ***Zydus Wellness Products Ltd. v. Cipla Health Ltd., 2023 SCC OnLine Del 3785;***

(xv) ***Abu Dhabi Global Market v Registrar of Trademarks Delhi 2023 SCC Online Del 2947;***

(xvi) ***Sky Enterprise (P) Ltd. v. Abaad Masala & Co., 2020 SCC OnLine Bom 750;***

(xvii) ***Moroccanoil Israel Ltd. v. Modicare Ltd., (2022) 6 HCC (Del) 548;***

(xviii) ***T.V. Venugopal v. Ushodaya Enterprises Ltd., (2011) 4 SCC 85;***

(xix) ***Info Edge (India) (P) Ltd. v. Shailesh Gupta, 2002 SCC OnLine Del 239;***

(xx) ***Sunil Mittal v. Darzi On Call, 2017 SCC OnLine Del 7934;***

(xxi) ***PEPS Industries (P) Ltd. v. Kurlon Ltd., 2022 SCC OnLine Del 3275;***

(xxii) ***Apaar Homez Mart (P) Ltd. v. Century World, 2022 SCC OnLine Del 2762;***

(xxiii) ***Anil Verma Vs. Ashok Kumar, 2019 SCC OnLine Del 6910;***

(xxiv) ***Renaissance Hotels Holding Inc. vs. B. Vijayasai 2022 (5) SCC 1;***

(xxv) ***Automatic Electric Ltd. v. R.K. Dhawan, 1999 SCC OnLine Del 27;***

(xxvi) ***Caterpillar Inc. v. Mehtab Ahmed, 2002 SCC OnLine Del 865.***

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

23. Mr. Dayan Krishnan, learned Senior Counsel appearing on behalf of the respondent nos. 1 & 2 along with Mr. Pravin Anand has contended that the impugned order is a well reasoned order and the I.A. no. 12308/2023 filed by the appellant was rightly rejected by the learned Single Judge. According to him, the product of the respondents is a facial cleanser that is sold under the marquee brand of "82°E". According to him, the use of the term "Lotus" is a *bona fide* descriptive use protected within Section 30(2)(a) and Section 35 of the Act as it describes a product, which is containing the ingredient being extracts of the lotus flower and the same is not a matter of contention. He has relied on the material available on the website, social media, trade article and the reply to the said appeal, to support his arguments.

24. Mr. Krishnan is of the view that since the term "Lotus Splash" is used descriptively for a product, which is a face wash/facial cleanser wherein the term "Lotus" alludes to the main ingredient and the term "Splash" describes a process of washing the face, which entails splashing. It is his case that the respondent nos. 1 & 2 followed this nomenclature for their entire product line wherein the product features the active ingredient prominently as part of the product name.

25. On the issue of whether the exception contained under Section 30(2)(a) and Section 35 of the Act are applicable to the respondent nos. 1 and 2 herein is concerned, Mr. Krishnan places reliance on the judgment in

the case of ***Marico Ltd. (supra)*** to show the limits in the rights of the trade mark owner. He has stated that the term "Lotus Splash" refers to the kind, quality, quantity, intended purpose or other characteristics of goods or services and hence, being a *bona fide* user of the term "Lotus Splash" in a descriptive sense, the case of the respondents falls under the said exception in Section 30(2)(a) and Section 35 of the Act. According to him, neither Section 30(2)(a) nor Section 35 of the Act prescribe the nature of the use by a party, which covers this defence, in other words, the use of the term in a descriptive sense as a part of a legend or byline is not a use, which attracts the provisions pertaining to infringement under the Act.

26. The judgment in the case of ***Marico Ltd. (supra)*** on another aspect, as per Mr. Krishnan, had held that the persons adopting descriptive marks cannot be permitted to monopolies the same and preclude third party usage of the said mark in a *bona fide* capacity. According to him, the real test in determining whether or not the defences under Section 30(2)(a) and Section 35 of the Act are available or not, one would need to test the fact that whether there is an attempt to cause confusion or ride on the goodwill. Once this test is answered in favour of the respondents, the users would be entitled to use the descriptive mark in any and every manner, which repudiates the argument of the appellant that the said usage can only be in a legend or a byline. The usage of the term "Lotus Splash" in conjunction with the trade mark "82°E" would clearly establish *bona fide* use under the Act.

27. He buttresses his arguments on the judgment in ***Cadila Health Care Ltd. (supra)*** to state that the test while determining the application of the exception under Section 30(2)(a) and Section 35 of the Act is, whether there

is an attempt to ride on the bandwagon of the appellant's indubitably market leading product. He stated that the Coordinate Bench of this Court in that case had rejected the findings of the learned Single Judge that the phrase "Sugar Free" can only be used a part of the sentence or a catchy legend and that the same can only be descriptive but not a part of a product name.

28. Mr. Krishnan submits that in the case at hand, there is no attempt to ride on the goodwill of the appellant and according to him, the record reveals the opposite and that there is no scope for confusion between the products of the appellant and that of the respondents; given that there is a price difference between the said products, which averts any possibility of confusion. Moreover, the get up of the product and the use of the trade mark of the respondents being "82°E" further allays any possibility of confusion. Given that the goodwill of the respondent no. 1 is a reflection of the celebrity status of respondent no. 2, there is no possibility of encashing on the goodwill of the appellant. Since there is a rule against dissection of trademark as explained in ***Hamdard National Foundation (India) v. Sadar Laboratories P. Ltd. 2022 SCC Online Del 4523***, therefore, the term "Lotus Splash" cannot be dissected and has to be compared with the mark "Lotus" / "Lotus Herbal".

29. Mr. Krishnan would contend that the learned Single Judge has correctly noted the factual and legal submissions and returned with findings that do not warrant any interference. The protection afforded under Section 30(2)(a) of the Act cannot be curtailed by any foreign jurisprudence by holding that the mark is only descriptive and not suggestive for the fact that it contains lotus extract. The finding that "Lotus Splash" immediately

conveys to the average consumer that the said product contains lotus extract and is a key ingredient and hence, entitling the usage by the respondents of the said term as being an indicative and a prominent part of its product. Any remaining doubt as to a possibility of confusion is removed by the presence of the trade mark "82°E" and hence, no case for passing off is made out since there is a variable difference in the products.

30. Lastly, Mr. Krishnan has relied upon the judgments in the cases of ***Wander v. Antox, (1990) Supp SCC 727*** and ***Ace Technologies Corp and Ors, v. Communication Components Antenna Inc., FAO(OS) (COMM.) 186/2019*** to state that the impugned order is not perverse or arbitrary and warrants no interference.

REJOINDER SUBMISSIONS ON BEHALF OF THE APPELLANT

31. Mr. Lall in his rejoinder has contested the submissions made on behalf of the respondents and has handed over during the course of proceedings a chart of brands to argue that adding a certain ingredient to a new product would not give rise to a new right. To that effect, he has given a list of brands and has stated whether adding a certain ingredient along with another descriptor would not give rise to a new protected trade mark such as adding mango fruit dyes or fabric wash while manufacturing clothes does not entitle an individual to sell its products under a hypothetical name "MANGO SLASH" and thereby, claiming *bona fide* use against the mark "MANGO", which is a brand associated with apparel. He has also given some other similar examples.

32. He has drawn our attention to paragraphs nos. 46, 54, 56 to 60, 68 and

74 of the impugned order to state that there are contradictions inconsistencies within the said order. He has also handed over a chart during the course of the proceedings to highlight the same.

ANALYSIS AND CONCLUSION

33. Having heard the learned counsel for the parties and perused the record, the short issue, which arises for consideration is whether the respondents are entitled to the defence available under Section 30(2)(a) and Section 35 of the Act, as held by the learned Single Judge, leading to the rejection of the application under Order XXXIX Rule 1 and 2 of the CPC.

34. The products belonging to the appellant/plaintiff and that of the respondents/defendants for comparison have been depicted below:-

Appellant's products under the mark LOTUS	*Respondents infringing product*
LOTUS® word *per se* 	

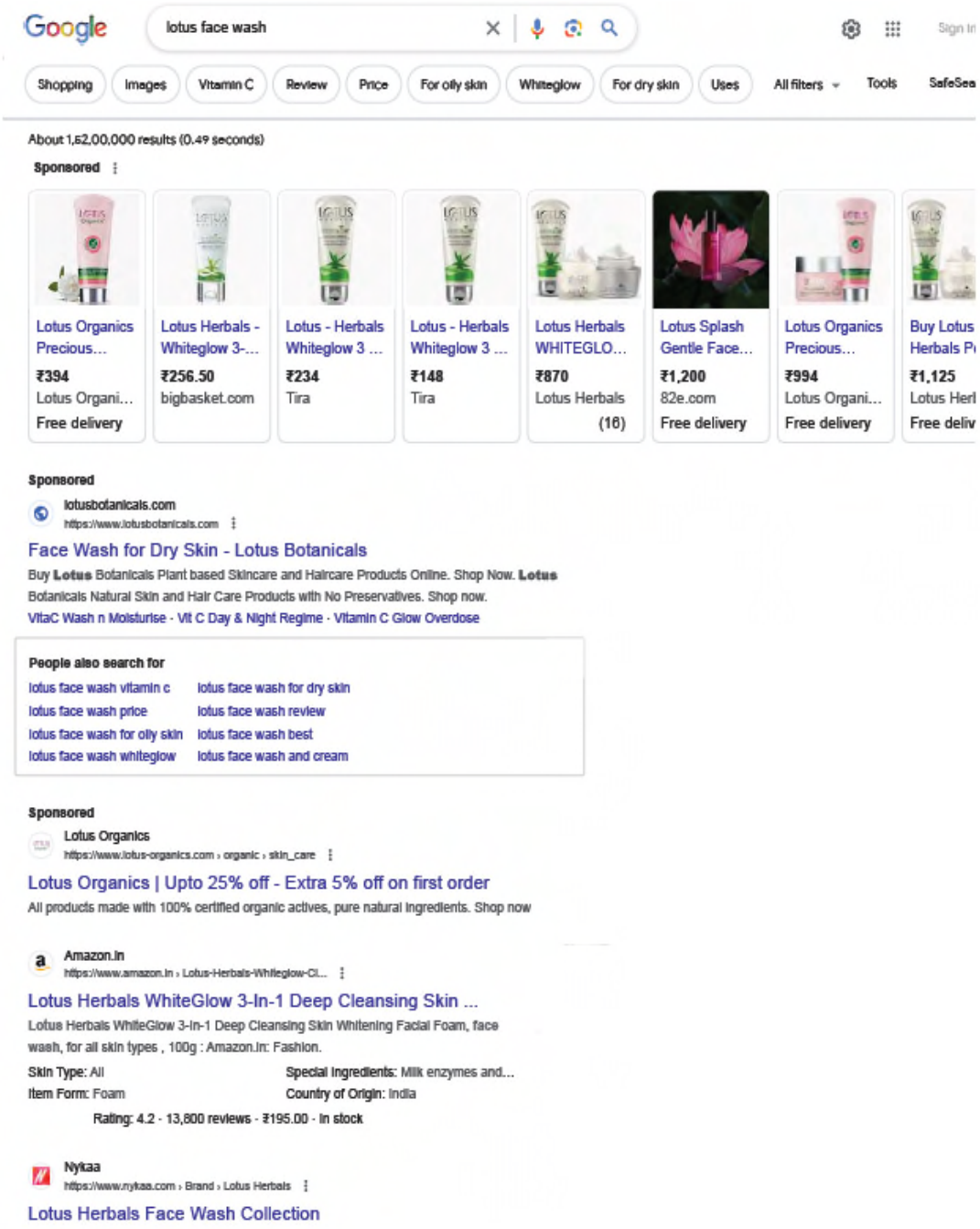
35. To answer the issue, it is necessary to deal with the stand of the respondents/defendants that the words “Lotus Splash” are descriptive words. The contention of Mr. Krishnan is that the words are descriptive words as they denote the characteristic of the lotus as it contains lotus flower extracts and bioflavonoids, since the product is intended to be used as a face wash/facial cleanser. This submission of Mr. Krishnan is countered by Mr. Lall by stating that it is their own case, i.e., of the respondents/defendants that the phrase “Lotus Splash” is being used as a mark. In this regard, he has drawn our attention to paragraphs 20 to 24 of the written statement of the respondents/defendants which we reproduce as under:

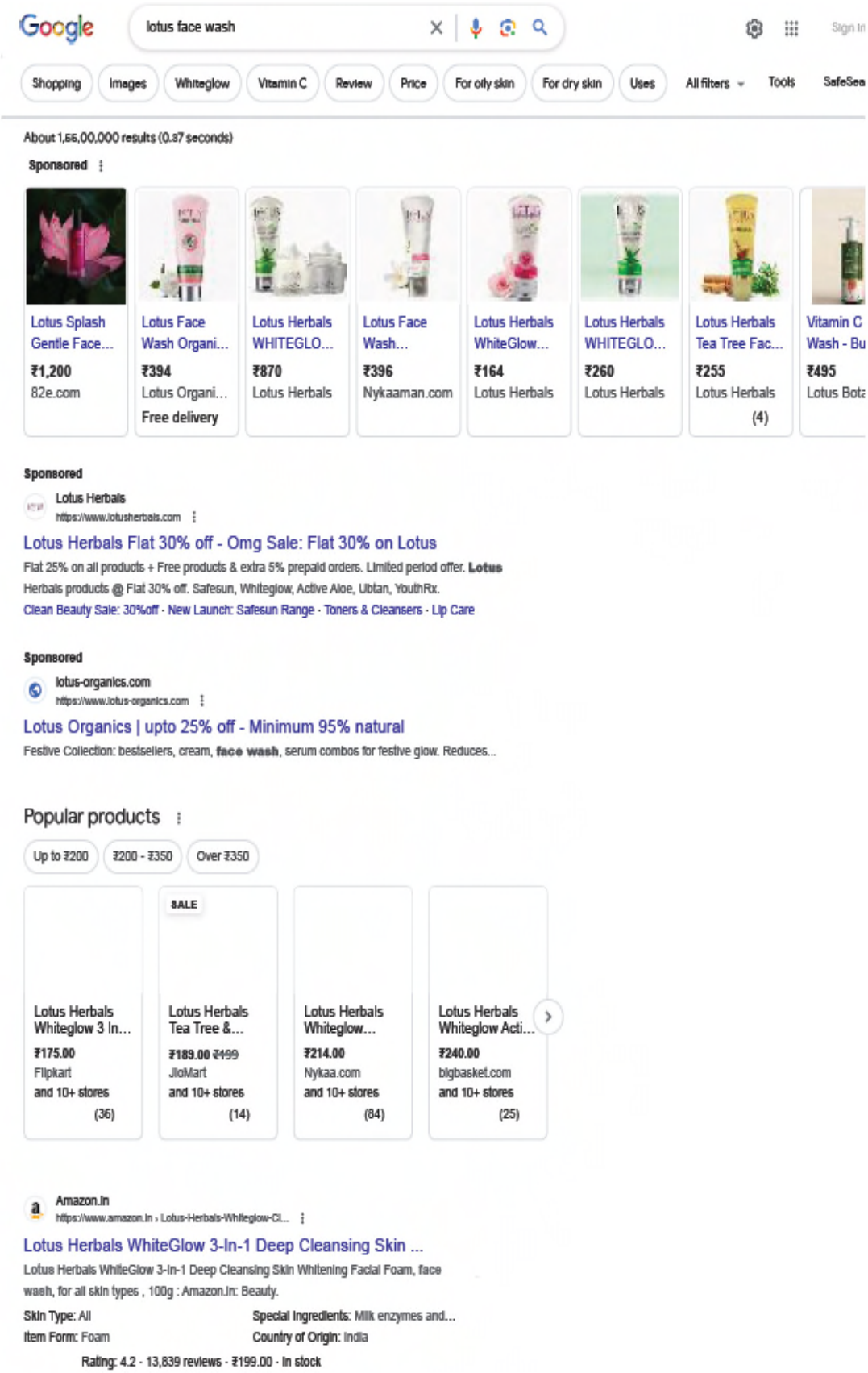
> *“20. 'Lotus Splash' is a conditioning cleanser. The primary ingredient of the product is Nelumbo Nucifera extract. Nelumbo Nucifera is the botanical name for the lotus plant.*
> *21. In fact, the product itself clearly bears a description being 'conditioning cleanser with lotus and bioflavonoids.' It is clear that 'lotus' is used to describe the product and more particularly the fact that it is made inter alia using 'lotus flower extract'.*
> *22. Even the website of the Defendant No.1, which bears a photograph of this product also bears a clear description of the same including the fact that one of the key ingredients of the said product is lotus flower extract. Copies of screenshots showing this product of the Defendants' along with its product description as depicted on the said Defendants' website is annexed with the list of documents being filed with the Written Statement.*
> *23. From the aforementioned facts, it is evident that the Defendants are merely using the term 'lotus ' in a descriptive manner in order to describe the key ingredients of their face wash and not in any other manner whatsoever. This use is expressly protected in terms of Section 30(2)(a) and Section 35 of the Trademarks Act, 1999.*

24. It is stated that the Plaintiffs assertion of rights is contrary to the statutory mandate contained in Section 30(2)(a) and Section 35 of the Trademarks Act, 1999. In specific, the Defendants state that the Plaintiff is attempting to monopolise a word in the English language that is commonly used to describe an ingredient. The word 'lotus' has been and continues to be used regularly in the industry to describe the plant and it's use as an ingredient in cosmetics and other personal hygiene products."

36. There is a clear indicator in the averments that the words "Lotus Splash" is being referred to as mark. In fact Annexure 14 and 41 of the documents accompanying this appeal, to which our attention has been drawn, depicts the sale of the products on the website and the same indicates that the product is being sold as "Lotus Splash" and not as "82° E" and in that sense the words "Lotus Splash" are not be construed as a description of lotus extracts accompanied by bioflavonoids, but rather the product of the respondents which appears in the first row that is a pictorial representation of the products and shows that respondents' product is named as "Lotus Splash Gentle Face …" along with the products of the appellant which can be sourced from various suppliers including the appellant company. Similarly, the product of the respondents also mentions the website of the respondent being "82e.com" which in this assortment of results may be unclear to the average consumer that the same is the supplier or owner of the product. In this context the mark of the respondents in this case does not fulfill the function of the trade mark "82°E" i.e., being the source identifier. Annexure 14 which is a screenshot taken on 30.06.2023 of the Google search for the term "*lotus face wash*" as featured product of the appellant and the respondents; and Annexure 41 which is another Google search

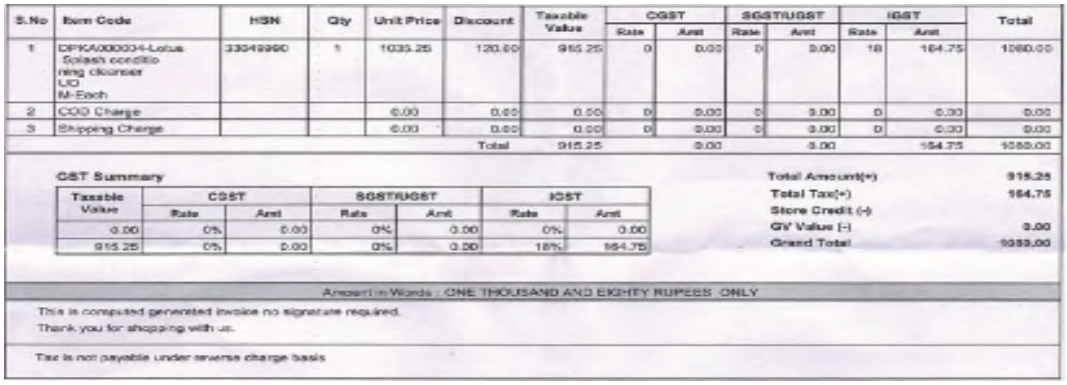
conducted on 31.07.2023 for the term "*lotus face wash*" depicts the product of the respondents as the first result in the sponsored results. We have reproduced both the screenshots as under:




Google
lotus face wash
Shopping
Images
Whiteglow
Vitamin C
Review
Price
For oily skin
For dry skin
Uses
All filters
Tools
SafeSea
About 1,66,00,000 results (0.37 seconds)
Sponsored
Lotus Splash Gentle Face...
₹1,200
82e.com
Lotus Face Wash Organi...
₹394
Lotus Organi...
Free delivery
Lotus Herbals WHITEGLO...
₹870
Lotus Herbals
Lotus Face Wash...
₹396
Nykaaman.com
Lotus Herbals WhiteGlow...
₹164
Lotus Herbals
Lotus Herbals WHITEGLO...
₹260
Lotus Herbals
Lotus Herbals Tea Tree Fac...
₹255
Lotus Herbals
(4)
Vitamin C Wash - Bu
₹495
Lotus Bota
Sponsored
Lotus Herbals
https://www.lotusherbals.com
Lotus Herbals Flat 30% off - Omg Sale: Flat 30% on Lotus
Flat 25% on all products + Free products & extra 5% prepaid orders. Limited period offer. Lotus Herbals products @ Flat 30% off. Safesun, Whiteglow, Active Aloe, Ubtan, YouthRx.
Clean Beauty Sale: 30%off · New Launch: Safesun Range · Toners & Cleansers · Lip Care
Sponsored
lotus-organics.com
https://www.lotus-organics.com
Lotus Organics | upto 25% off - Minimum 95% natural
Festive Collection: bestsellers, cream, face wash, serum combos for festive glow. Reduces...
Popular products
Up to ₹200
₹200 - ₹350
Over ₹350
SALE
Lotus Herbals Whiteglow 3 In...
₹175.00
Flipkart
and 10+ stores
(36)
Lotus Herbals Tea Tree &...
₹189.00 ₹499
JioMart
and 10+ stores
(14)
Lotus Herbals Whiteglow...
₹214.00
Nykaa.com
and 10+ stores
(84)
Lotus Herbals Whiteglow Acti...
₹240.00
bigbasket.com
and 10+ stores
(25)
Amazon.in
https://www.amazon.in › Lotus-Herbals-Whiteglow-Cl...
Lotus Herbals WhiteGlow 3-In-1 Deep Cleansing Skin ...
Lotus Herbals WhiteGlow 3-In-1 Deep Cleansing Skin Whitening Facial Foam, face wash, for all skin types , 100g : Amazon.in: Beauty.
Skin Type: All
Special Ingredients: Milk enzymes and...
Item Form: Foam
Country of Origin: India
Rating: 4.2 · 13,839 reviews · ₹199.00 · In stock

37. The contention of Mr. Krishnan that the term "Lotus Splash" is being used as a descriptor further does not pass muster on the ground that the respondents have in fact purchased the keywords "Lotus Face Wash" to array itself as the first result among the sponsored results on the Google search results page, which shows that intent of the respondents to use the term "Lotus" in a trade mark sense. In this regard, we make a reference to a judgment of this Court in the case of ***Google LLC v. DRS Logistics (P) Ltd. & Ors 2023 SCC online Del 4809***, wherein a Coordinate Bench of this Court had held that the use of a trademark as a keyword to trigger display of an advertisement of goods or services would be use of the mark in advertising. In the context of this case, since the respondents' product appears when the phrase "lotus face wash" is searched, thus this clearly shows the fact that the respondents intend to use the term as a mark and not as a mere descriptor.

38. The plea of Mr. Krishnan, the product is being sold as "82°E" cannot be accepted. Further, in this regard, we may also refer to Annexure A-13 which is an invoice dated 29.05.2025 of the respondents for the impugned product where the product is mentioned as "*Lotus Splash conditioning cleanser*" and no reference to "82°E" is made save for the email address care@82e.com . The said invoice reads as under:



S.No	Item Code	HSN	Qty	Unit Price	Discount	Taxable Value	CGST		SGST/UGST		IGST		Total
							Rate	Amt	Rate	Amt	Rate	Amt	
1	DPKA000004-Lotus Splash conditioning cleanser UO M-Each	33049990	1	1035.25	120.00	915.25	0	0.00	0	0.00	18	164.75	1080.00
2	COD Charge			0.00	0.00	0.00	0	0.00	0	0.00	0	0.00	0.00
3	Shipping Charge			0.00	0.00	0.00	0	0.00	0	0.00	0	0.00	0.00
					Total	915.25		0.00		0.00		164.75	1080.00

GST Summary

Taxable Value	CGST		SGST/UGST		IGST	
	Rate	Amt	Rate	Amt	Rate	Amt
0.00	0%	0.00	0%	0.00	0%	0.00
915.25	0%	0.00	0%	0.00	18%	164.75

Total Amount(+)	915.25
Total Tax(+)	164.75
Store Credit (-)	
GV Value (-)	0.00
Grand Total	1080.00

Amount in Words : ONE THOUSAND AND EIGHTY RUPEES ONLY

This is computer generated invoice no signature required.
Thank you for shopping with us.

Tax is not payable under reverse charge basis

39. If this is the factual position, the exception as carved out under Section 30(2)(a) of the Act is not of any help to the respondents/defendants. This we say so for the simple reason, the words "Lotus Splash" are being used as a mark and as such cannot be construed as indicative of the quality/characteristic of the product as a face wash/facial cleanser. The argument of Mr. Lall in this regard is that the judgments in the cases of ***Cadila Health Care (supra)*** and ***Marico (supra)*** are in contrast to the facts of this case inasmuch a reference to the term "Lotus" may be descriptive nonetheless it does not absolve the term / mark "Lotus Splash" from being regarded as a suggestive mark and therefore not being descriptive in nature. We agree with this submission of Mr. Lall, to the extent that not every reference to the term "Lotus" is to the mark "Lotus Splash" and that the respondents are entitled to use the term "Lotus" as a descriptor but not in the manner that it has being projected as a sub mark.

40. It is important to note that other similar products of the respondents being "Ashwagandha Bounce", "Turmeric Shield", "Licorice Beam", "Gotu Kola Dew" and "Patchouli Glow" which though indicative of the characteristic of a product have been applied for registration as a trade mark by the respondents/defendants but not "Lotus Splash". The same indicates that those words which are similarly situated are being used as a trade mark by the respondents/defendants. In fact, the issue arose out of the factum that the respondents/defendants had not stated the fact that the names of the aforesaid products have been applied for trademark registration and hence in that sense there was a concealment. The same was rejected by the learned single judge by stating that those marks are different from the impugned

mark in “Lotus Splash”.

41. Although the learned Single Judge has noted the fact that only some of the products of the respondents have been registered, no cogent reason has been given by the respondents as to why other products of the respondents have been registered but not the product “Lotus Splash” which has been claimed as an exception to the other products is a descriptor. Even though the learned Single Judge remarked that the present case does not concern the other marks but the issue of concealment should have been considered by the learned Single Judge as concealment of the actions of the respondents shows their intent to use “Lotus Splash” as a mark indirectly. Moreover, we do not agree with the reasoning of the learned Single Judge that in the case of “Licorice Beam” or “Gotu Kola Dew” there is no descriptiveness in the products whereas “Patchouli Glow”, “Turmeric Shield” or “Lotus Splash” are descriptors, especially when the respondents have applied for trademark registration of their products except for “Lotus Splash”.

42. Furthermore, we must also question the *bona fides* of the respondents and we dissent with the conclusion of the learned Single Judge wherein the suppression of material fact, being that the respondents had applied for registration of marks for its other products was not putforth before the Court. Although the same would be subject to trial whether the respondents had in fact acted *bona fide* or not but the learned Single Judge ought to have further examined the issue, more so since the matter pertained to grant of an equitable relief, at the behest of a party, who is a prior user, having registered trademarks and alleging infringement.

43. We are unable to agree with such conclusion of the learned Single Judge, as according to us, all the products including "Lotus Splash" though appears to be descriptive are in fact being used as a trade mark. In other words, there is no differentiation between the marks "Lotus" and "Lotus Splash". Having said so, we find ourselves in agreement with the reasoning of the learned Single Judge while dealing with the scope of the Section 29 of the Act wherein the learned Single Judge had held that since the marks of the appellant are registered a *prima facie* case for infringement is made out. Moreover, we accept the submission of Mr. Lall that once there is a finding given by the Court on a fact that a *prima facie* case for infringement is made out an injunction ought to follow. In this regard, we refer to the relevant paragraphs of the impugned judgment which read as under:

> *"57. That apart, where the plaintiff has a word mark registration and the entire word mark of the plaintiff is contained in the defendants' impugned product name, there is clear possibility of a likelihood of confusion. This is not a case in which part of the plaintiff's mark is to be found in the impugned mark of the defendants, so that there can be a possibility of confusion being mitigated by the surviving differences between the two marks. The entire mark "Lotus" is part of the defendants' "Lotus Splash" mark and, as both marks are used for cosmetic preparations such as face wash, there is a prima facie likelihood of confusion as a result of the use, by the defendants, of the impugned "Lotus Splash" mark.*
>
> *58. The three ingredients of similarity of marks, similarity/identity of the goods in respect of which the rival marks are used and likelihood of confusion or association in the minds of the public as a result of the existence of these two factors are prima facie satisfied in the present case.*

> *59. Inasmuch as the plaintiff's marks are registered, a prima facie case for infringement exists, within the meaning of Section 29 of the Trade Marks Act.*"

44. Section 29(1) of the Act clearly states that a registered trade mark is infringed when it is being used by a person without the permission of the registered proprietor in the course of trade with a mark which is either identical or deceptively similar, being used for the same goods/services and in a manner that may be perceived to be considered use as a trademark. The learned Single Judge examines the marks and returns a finding on this aspect. Considering that the appellant is a prior user with a registration as compared to the respondents who are subsequent non-registered users, surely the benefit of registration must enure to the benefit of the former. Especially when the appellant had begun operations on 20.09.1993 with registrations of their trade mark going back to 02.08.1996 and their turnover for the year 2022-23 was to the tune of Rs.694 *crores* as opposed to the respondent no.1 company which was incorporated only on 05.05.2021.

45. Furthermore, the learned Single Judge has come to the conclusion that there is a likelihood of confusion along with the mark of the respondents being the same and in the same category of goods and service. The learned Single Judge has also concluded that an individual who is a regular purchaser of such products would know the difference between the marks. We must note that these findings are inconsistent with each other and the latter goes beyond the test laid down in the case of ***Cadila Healthcare Ltd. (supra)*** for the average consumer. The test for confusion must be assessed from the stand point of the average consumer and not from the perspective of an informed consumer.

46. The learned Single Judge has in clear terms concluded on the aspects of likelihood of confusion and also that three ingredients of similarity of marks, similarity/identity of goods in respect of which the rival marks are being used including likelihood of confusion are satisfied in this case. The marks "Lotus" of the appellant and "Lotus Splash" of the defendants are used for cosmetic preparation such as a face wash and there is a likelihood of confusion. Hence to give the respondents/defendants the benefit under Section 30(2)(a) is clearly erroneous, more particularly in the facts of this case.

47. Mr. Krishnan has argued that in order to determine whether the defences under Section 30(2)(a) and Section 35 of the Act are applicable to the case of the respondents, the question of likelihood of confusion would need to be answered. We note that the learned Single Judge has returned a finding on this issue and hence at a *prima facie* stage this defence would not be available to the respondents. In the judgment in the case of ***S. Syed Mohideen (supra)***, the Supreme Court had emphasised the superiority of the rights of the prior user and had stated that registration merely recognises the pre-existing common law rights. The Supreme Court had in the case of ***Neon Laboratories Ltd. v. Medical Technologies Limited and Ors., (2016) 2 SCC 672***, held that the prior use with registration alone is not enough, the use of a trade mark must be consistent and continuous. Both the conditions are satisfied in favour of the appellant, who in this case is a registered prior user and must be accorded the benefit of the same.

48. Whether the mark of the respondents is descriptive or not, would be a subject matter of trial, however at this *prima facie* stage we are of the

opinion, based on the records before us that the arguments advanced being that the mark/phrase "Lotus Splash" is not a descriptor as the mark is sought to be used as a mark or as a sub-brand at the most. In this regard, we may make a reference to a judgment of Bombay High Court in the case of ***Hem Corporation (supra).***

49. The reason why we say that the mark of the respondents is a sub brand is because the respondents have registered the word/phrase on their other products over and above the mark "82°E" such as "Turmeric Shield", "Ashwagandha Bounce", etc. It implies that the words/mark "Lotus Splash" is similar / identical and at par with the other products of the respondents as a sub mark under the umbrella mark i.e., "82°E". It follows as held in the case of ***Hem Corporation (supra)*** that a sub-mark does not fall outside the ambit of the provisions applicable to trade marks. The relevant paragraphs are as under:-

> *"25. The most prominent feature in the defendant's packaging/label is indeed the word "MANGALDEEP" written in a stylized manner within the device of a rectangle with red borders. To the right of the rectangle is the word "MADHUR 100" written in red letters within a horizontal oval device with a white background. The letters in the word "MADHUR" are indeed much smaller than the letters in the word "MANGALDEEP". The word "MANGALDEEP" is more prominent than the mark "MADHUR 100". That, however, to my mind, makes no difference for the mark "MADHUR 100" appears as a part of a composite mark "MANGALDEEP Madhur 100" and not as merely a term descriptive of the products sold under the mark "MANGAL DEEP". The placement of the word "MADHUR 100" right next to the word "MANGALDEEP" enhances the possibility of the consumer considering the mark to be*

"MANGALDEEP Madhur 100" and not "MANGALDEEP" alone.

26. The defendant contended that its agarbattis are sold under the mark and its various variants containing descriptive sub-brands such as "MOGRA", "JASMINE", "SANDALWOOD", "MADHUR" and "MADHUR 100"; that "MANGALDEEP" is the umbrella brand and that it uses this brand in conjunction with descriptors such as "MADHUR" and "MADHUR 100" and that the descriptors are used to signify the quality and characteristics of the products and are used only in conjunction with the umbrella brand "MANGALDEEP".

xxxx xxxx xxxx xxxx

28. The intention to use a mark as a trademark is not the only factor that constitutes infringement. A registered trademark is infringed by a person if he uses it in such a manner as to render the use of the mark likely to be taken as a trademark. In other words the use of a registered trademark would constitute an infringement if it indicates a connection in the course of trade between the person and his goods or services irrespective of his intention. This is clear from the phrase in section 2(1)(zb)(ii) "for the purpose of indicating or so to indicate".

29. I have already come to the conclusion that the use of the mark by the defendant is as a trademark and not merely as descriptive of the product.

30. I also find well founded Dr. Tulzapurkar's submission that the defendant, in fact, intended using the word "MADHUR" as a trademark and not merely to describe its products. Dr. Tulzapurkar rightly prefaced his reference to the various factors with the comment that although each of these factors taken by themselves may not support his submission, taken together they do.

31. The reliance upon the defendant's application for registration of the label mark is, however, of no assistance in considering this aspect. The application for registration was not of the word mark "MADHUR". The label contains the entire get-up of the packaging, including the words

> *"MANGALDEEP Madhur 100". The label by itself only begs the question viz. whether the word "MADHUR" is used as a mark or not.*
> *32. Dr. Tulzapurkar then relied upon various averments in the affidavit in reply which refer to "MANGALDEEP" as the umbrella brand and the use of the trademark "MANGALDEEP" in conjunction with other words such as "MANGALDEEP Madhur", "MANGALDEEP Mogra", "MANGALDEEP Jasmine" and "MANGALDEEP Madhur 100" as sub-brands. Dr. Tulzapurkar relied upon these references in the affidavit in reply. In paragraph 7, it is stated that the defendant's label trademark application "MANGALDEEP Madhur" was advertised in the TM Journal. In paragraph 10-h, it is stated that the defendant launched it's brand of agarbattis "primarily under its umbrella brand "MANGALDEEP" and this umbrella brand was further associated with a wide range of descriptive sub-brands like ……. Madhur etc." In paragraph 10-q, the defendant has furnished the total sales figures for the "brand MANGALDEEP Madhur". Paragraph 10 states that the defendant's agarbattis under the "brand MANGALDEEP Madhur" are patronized by a wide cross-section of population and the brand "MANGALDEEP" and all the descriptive sub-brands enjoy considerable goodwill and reputation.*
> *33. There is indeed a reference to "MANGALDEEP Madhur" as a descriptive sub-brand. A sub-brand does not fall outside the ambit of a trademark if it is used as a mark. In fact, a reference to it as a sub-brand would indicate that it is a brand name/mark."*

50. Similarly, in the case of ***Piruz Khambatta (supra)*** wherein the facts are the plaintiff no.1 was the registered proprietor of trademark/trade name "RASNA" and its variants in India in various classes under the provisions of the Act. The plaintiffs therein had over 100 registrations of the mark "RASNA" in India, the plaintiff no.1 has also held the registration of the

trade mark "RASNA" and its variants in many foreign countries as the plaintiffs have also been marketing and exporting goods under the said Trade Mark. The allegations of infringement by the plaintiff against the defendant was primarily for the reason that exporting unmanufactured tobacco products to over 75 countries with brand name "AFZAL" with flavor of "Pan Rasna". As per the defendants, "Pan Rasna" was not a trade mark and was only one of the many flavours of tobacco product being sold under the trademark "AFZAL". The said tobacco related products and packaging bore the mark "AFZAL" in larger font than the term "Pan Rasna". The learned Single Judge therein on the basis of the facts of the case as arose for consideration in the said case, has in paragraphs 38 and 41 to 45 held as under:-

> *"38. It is also pertinent to mention here that the manner of use by the defendants, it cannot be said that they are merely using the same in order to describe their products. Rather, the use of the defendants shows and they are using as a sub-brand. Therefore, the decisions referred by the defendants are not applicable in the facts of the present case.*
>
> *xxxx xxxx xxxx xxxx*
>
> *41. In the present case, the mark RASNA is a registered trade mark of the plaintiffs which is being used by them for the last forty years and it has acquired goodwill and reputation as per the material placed on record. The said trade mark has also been protected from time to time. After having examination of defendants' products which are scanned and are shown in para 19 of my order, prima facie establishes that the defendants intend to use it as a sub brand and not in descriptive sense. Thus, the present case and the cases referred to by the defendants are materially different.*
>
> *42. From the above, it is clear that the use of the mark RASNA*

by the defendants as a name or sub-mark amounts to infringement even if the registered trade mark is not used by the plaintiffs as there is no requirement of user under the provisions of infringement of trade mark or conferring the exclusive rights granted by virtue of registration, non user is a one of the defence which may be considered by the courts while deciding the interim application. It is a practice in law that till the time the registered trade mark is entered in the register, no one is entitled to infringe the same unless the court comes to the conclusion the mark adopted and used by the defendants is covered within the meaning of Section 30 and 35 of the Act and such user is not made in bad faith.

43. In the present case, RASNA is prima facie cannot be said to be descriptive mark in view of the averments made by the plaintiffs in the plaint and documents placed on record. At the most the word RAS in relation to soft drink concentrates can be suggestive word which describe the character and quality of the goods. Mr. Praveen Anand, learned counsel appearing on behalf of the plaintiffs gave proposal to settle the matter and his clients have no objection if the defendants may amend the use of mark PAN RAS instead of RASNA. The suggestion given by the plaintiffs was not acceptable to the defendants.

44. It is not understood as to why the defendants have chosen the mark RASNA in relation to tobacco products when the defendants have already had the mark BOMBAY PAN as one of the flavours. It is also surprised to note that the defendants are using the name Rooh Afza which is the known Trade Mark of Hamdard Dawakhana. It appears to the court that these names are used by the defendants in order to impress the customers that the defendants have some association with these companies. Incase the defendants are allowed to use the name RASNA, tomorrow they will use the name PAN PEPSI/PAN LIMCA/PAN AQUAFINA etc. as other flavours. The products in question already contain the warning that "it is injurious to health" and it causes cancer. The mark which has already acquired residual goodwill and reputation if used by another party other than real owner, there would be fair chances of danger of tarnishment and

dilution of the same, otherwise, Hukkah tobacco manufactured by the defendants do not have either the PAN RAS ingredient or any content which can cure the soul as the defendants are using the expression ROOH AFZA. The said claim of the defendants in nature of flavour gives in the indication of False Trade Description and is untrue within the knowledge of the defendants.

45. In my view that there is hardly any hardship to the defendants incase the interim order granted would continue. The balance of convenience also does not lie in favour of the defendants. If the defendants are allowed to use the name RASNA or part of PAN RASNA, no doubt the plaintiffs will suffer irreparable harm not only financially but also to their goodwill and reputation. Thus, the adoption of the said name is not with bonafide intention but it appears that it was deliberate with malafide intention on the part of defendants in order to take the advantage of known trade mark in the market."

51. In a recent case of ***Pernod Ricard India Pvt. Ltd. & Anr. v. Karamveer Singh Chhabra, 2025 SCC Online SC 1701,*** the Supreme Court while not granting interim relief has laid the following principles for grant of injunction:

"(F) LEGAL PRINCIPLES GOVERNING GRANT OF INJUNCTION

36. The Trade Marks Act, 1999 does not prescribe any rigid or exhaustive criteria for determining whether a mark is likely to deceive or cause confusion. Each case must necessarily be decided on its own facts and circumstances, with judicial precedents serving to illuminate the applicable tests and guiding principles rather than to dictate outcomes.

36.1. As a general rule, a proprietor whose statutory or common law rights are infringed is entitled to seek an injunction to restrain further unlawful use. However, this remedy is not absolute. The considerations governing the grant of injunctions in trademark infringement actions broadly apply

to passing off claims as well. That said, a fundamental distinction remains: while a registered proprietor may, upon proving infringement, seek to restrain all use of the infringing mark, a passing off action does not by itself confer an exclusive right. In appropriate cases, the court may mould relief in passing off so as to permit continued use by the defendant, provided it does not result in misrepresentation or deception.

36.2. The grant of injunction - whether for infringement or passing off - is ultimately governed by equitable principles and is subject to the general framework applicable to proprietary rights. Where actual infringement is established, that alone may justify injunctive relief; a plaintiff is not expected to wait for further acts of defiance. As judicially observed, "the life of a trademark depends upon the promptitude with which it is vindicated."

36.3. The principles laid down in American Cyanamid Co. v. Ethicon Ltd.30 continue to guide the Courts while determining interim injunction applications in trademark cases. The following criteria are generally applied:

(i) Serious question to be tried/triable issue: The plaintiff must show a genuine and substantial question fit for trial. It is not necessary to establish a likelihood of success at this stage, but the claim must be more than frivolous, vexatious or speculative.

(ii) Likelihood of confusion/deception: Although a detailed analysis of merits is not warranted at the interlocutory stage, courts may assess the prima facie strength of the case and the probability of consumer confusion or deception. Where the likelihood of confusion is weak or speculative, interim relief may be declined at the threshold.

(iii) Balance of convenience: The court must weigh the inconvenience or harm that may result to either party from the grant or refusal of injunction. If the refusal would likely result

in irreparable harm to the plaintiff's goodwill or mislead consumers, the balance of convenience may favor granting the injunction.

(iv) Irreparable harm: Where the use of the impugned mark by the defendant may lead to dilution of the plaintiff's brand identity, loss of consumer goodwill, or deception of the public - harms which are inherently difficult to quantify - the remedy of damages may be inadequate. In such cases, irreparable harm is presumed.

(v) Public interest: In matters involving public health, safety, or widely consumed goods, courts may consider whether the public interest warrants injunctive relief to prevent confusion or deception in the marketplace.

36.4. In conclusion, the grant of an interim injunction in trademark matters requires the court to consider multiple interrelated factors: prima facie case, likelihood of confusion, relative merits of the parties' claims, balance of convenience, risk of irreparable harm, and the public interest. These considerations operate cumulatively, and the absence of any one of these may be sufficient to decline interim relief."

(Emphasis supplied)

52. Mr. Lall is justified in relying upon the judgments in the cases of ***Cadila Health Care Ltd. v. Cadila Pharmaceuticals (supra)***, ***Amritdhara Pharmacy (supra)*** and ***Kaviraj Pandit Durga Dutt Sharma (supra)***. We have considered the principles laid down in the said judgments and we are of the view that the appellants have made out a *prima facie* case for infringement. In this regard, we may refer to the judgment in the case of

Newgen IT Technologies Limited v. Newgen Software Technologies Limited 2025:DHC:4964-DB wherein the rights of the registered prior user were given protection over those of the unregistered subsequent user, the relevant portions of which reads as under:-

> *"54. It is an undisputed fact that the Respondent has been the prior user of the mark since 1992, whereas the Appellant only commenced operations in 2017 under a distinct identity, later entering into a Partnership Agreement with the Respondent. During the subsistence of that partnership, which was executed on 12.07.2023, the Appellant began expanding its business under names closely resembling the Respondent's, transitioning from "VCARE Infotech Solutions and Services Private Limited" to "NEWGEN IT Technologies Private Limited" in May-2024. Due to certain differences between the parties, they dissolved their partnership in September-2024. Immediately thereafter, the Appellant began rapidly expanding its operations, including initiating steps toward an IPO with this new name. All these circumstances collectively indicate that the test of balance of convenience and inconvenience also clearly tilts in favour of the Respondent, as non-grant of the injunction would have caused significant inconvenience and harm to the Respondent.*
>
> *xxxx xxxx xxxx xxxx*
>
> *68. We also reject the Appellant's contention that the Respondent's trademark registration relates solely to a label, and therefore, does not confer statutory rights over the word "NEWGEN". As reproduced in the Impugned Order, the Respondent currently holds more than 18 valid and subsisting trademark registrations prominently featuring "Newgen" as the dominant and distinctive element. Many of these marks date back decades. The*

> *Appellant's selective focus on a single label mark, in an attempt to undermine the Respondent's broader trademark rights, and its accompanying allegation of suppression, are legally unfounded and without merit. Even otherwise, "NEWGEN" is the predominant mark of the label. It is a settled principle of law that though the trademark should ideally be considered as a whole, there can be a predominant mark of the same which would attract the attention of the customer and have a recall value. The said predominant part of the trademark would, therefore, be entitled to an equivalent protection from misuse and violation."*

53. Interestingly, on a closer look at the product of the respondents, it is seen that the mark "Lotus Splash" is accompanied by the phrase "*conditioning cleanser with lotus and bioflavonoids*". The same clearly depicts the descriptive character of the respondents' product is not "Lotus Splash" but it is the phrase "*conditioning cleanser with lotus and bioflavonoids*" below the mark "Lotus Splash", wherein, characteristic of the product is sought to be highlighted. It surely means "Lotus Splash" independently is not indicative of any descriptiveness and since a lotus cannot be splashed, it follows that if the product is seen from the perspective of an average consumer it is clear that the words "Lotus Splash" are sought to be projected/used as a mark.

54. The plea today that "Lotus Splash" is descriptive of face wash cannot now be taken by the respondents, as the mark of the appellant being "Lotus" have come to be associated with Classes 3 and 5 of Trade Marks. Further, the appellant has been in long continuous usage and association with the mark for the products including face wash. In this regard, we refer to the

case of ***Procter & Gamble (supra)***, the relevant part of the judgment is reproduced below:-

> *"10. We have weighed the rival contentions aforesaid and do not find any merit in this appeal for the following reasons:*
>
> *xxxx xxxx xxxx xxxx*
>
> *(xii) Slogans/taglines/expressions though can be descriptive but are not necessarily descriptive; it cannot however be lost sight of that the slogan/tagline, if descriptive, does not serve the purpose for which it is coined and does not justify the high cost incurred in conceiving and popularizing the same. A distinctive as compared to descriptive slogan, conveys the company's and the product's essence as well as what it aspires to be and conveys the commercial expression to the consumers. It promotes memory recall;*
>
> *(xiii) We are of the view that the argument of, —ALLROUND PROTECTION as being descriptive of toothpaste is being raised today only because of the use of the same for a considerably long time as a tagline / slogan by the respondent / plaintiff and the resultant association thereof with the product i.e. toothpaste; till it was so used, none, from the expression —ALLROUND‖ or —ALLROUND PROTECTION could have associated it with or held the same as descriptive of a toothpaste;*
>
> *(xiv) We had in fact during the hearing, in a lighter vein, enquired whether not the word —ALLROUNDER‖, in the Indian context, is connected/associated more with the game of cricket than in relation to a toothpaste.*
>
> *(xv) The feeling today, of the words —ALLROUND PROTECTION being descriptive of toothpaste could perhaps be*

owing to the long usage thereof in relation to a toothpaste and may not have been so till it was first used in relation to toothpaste; the test, in our opinion, of descriptive is not of the day after long/repeated usage of some words in relation to a good or service, but of the day before such use; we are of the prima facie view that before the day of first use of the expression/words —ALLROUND PROTECTION in relation to a toothpaste, the same could not have been said to be descriptive thereof.

(xvi) There is a difference between words/marks which would classify as descriptive, generally of the goods or services, whosoever may be provider thereof and words/marks which communicate the particular/peculiar quality/qualities or features of product of one and which may not exist or do not exist in the same product being provided by others. In our opinion, it is only the former which are not registrable as trademark and which are not protected, and not the latter. The words —marks or indications which may serve in trade to designate the kind, quality, quantity, intended purposes, values…of the goods in Section 9(1)(b) cannot be read to include words/marks which designate the quality, intended purpose or values, not generic to the goods and services but unique to the goods of one and which may not be present in the same goods and services provided by another. Such words/marks, highlight and communicate to the consumer the difference claimed from the same goods or services of others, also available in the market. Of course, such words or marks would also be, in a sense descriptive of those unique features, quality, character, intended purpose of goods/services of one; however they will still classify as distinctive so long as none other till then has described those as unique to the product.

(xvii) The different manufacturers/suppliers of toothpaste have attempted to market their product by boasting the feature, either of being capable of resulting in extra white teeth or as protecting the gums or as producing a fresh breath. The respondent / plaintiff on the contrary marketed its product by

highlighting its product as capable of providing —ALLROUND PROTECTION and which was further described as, producing stronger whiter teeth, fresher breath and healthier gums. While the words stronger whiter teeth, fresher breath and healthier gums, in our opinion, are descriptive, the expression —ALLROUND PROTECTION connotes the peculiar quality of the product of the respondent/plaintiff. Thus the words —ALLROUND PROTECTION in our view cannot be said to be descriptive."

(Emphasis supplied)

55. In light of the above we find that the mark of the respondents even though may seem descriptive as per the submission of Mr. Krishnan, however on a closer look it becomes clear that the appellant was the first user to use the term "Lotus" in relation to cosmetics and that the respondents seek to take benefit of that association indirectly by incorporating the term "Lotus" in their product even though they have an existing mark being "82°E". The conduct of the respondents have given us a reason to believe albeit at this nascent stage of the suit, that the products of the respondents under the umbrella mark of "82°E" are sought to be used as sub marks / sub brands and since the appellant is an established prior user of the term "Lotus" and the respondents have consciously not applied for registration of the sub mark / sub brand "Lotus Splash" in order to take the defence of descriptiveness.

56. The aforesaid conclusion of ours finds basis in the fact that though the degree of imagination required may be low to associate "Lotus splash" with a cosmetic product due to the already existing mark "Lotus", the same would not in this case translate to a higher need in respect of competitors like the respondents herein. Both tests – the Degree of Imagination Test and

the Competitors' Need Test – which have been laid down by *McCarthy on Trademarks and Unfair Competition* have been referred to by this Court in ***Anil Verma v. R K Jewellers S K Group and Others, 2019 SCC OnLine Del 8252***. Although these tests have been held to be not relevant in view of the self contained and codified statute being the Trade Marks Act, 1999 but surely, the interpretation advanced in *McCarthy on Trademarks and Unfair Competition* would have a persuasive value.

57. If the terms "Lotus Splash" was a descriptor as it has been argued, then the phrase "*conditioning cleanser with lotus and bioflavonoid*" below "Lotus Splash" would become redundant. The argument of Mr. Lall that, "Lotus Splash" requires a certain degree of imagination to reach to the conclusion that the product at hand is a face wash with lotus extracts, is appealing. We must add that this fact is also known to the respondents which is why the product bears the description that the product is a facial cleanser with lotus extracts and bioflavonoids. That apart, the very fact the phrase "*conditioning cleanser with lotus and bioflavonoids*" is in smaller font as against "Lotus Splash" would show that the intent appears to encash the words "Lotus Splash" as a mark. We find that the trademark of the respondents "82°E" is at the base of the bottle as against the mark/phrase "Lotus Splash", which occupies a more prominent place at the top of the bottle, this surely suggests that the attempt is to make the mark "Lotus Splash" more prominent than the actual mark of "82°E". In this regard we refer to the judgment in the case of ***Moroccanoil Israel Ltd. (supra)*** wherein it was held as under:-

> *"A bare perusal of the two products would reveal that the*

defendant has used the word "Moroccan Argan Oil" as a trade mark. Claim of the defendant that it is not using "Morrocan Argan Oil" as a trademark is clearly belied by the prominent manner in which "Morrocan Argan Oil" has been written on the packaging as the same is more prominent than the defendant's trademark Salon Professional. Further the identical colour combination and the manner of writing "Morrocan Argan Oil" horizontally and the packaging is a clear copy of the plaintiff's product."

58. The Courts while examining two competing marks may not dissect them and look at them as a whole, but may take cognisance of the dominant features of the mark. It may be stated that the word "Lotus" is common within mark/words of the parties. The said word/mark shall surely cause initial interest confusion, that is, confusion in the minds of the consumers may arise at a preliminary stage prior to the actual purchase being completed and such confusion, as held by this Court in ***Under Armour Inc. v. Anish Agarwal & Anr., 2025:DHC:4243-DB*** at the initial stage is sufficient to meet the requirement of deceptively similar under Section 29 of the Act. In fact, there is a positive finding of the learned Single Judge in that regard, which we have quoted in paragraph 43 above.

59. One of the submissions of Mr. Lall is that the learned Single Judge did not consider the plea of the appellant/plaintiff that even the words "Lotus Splash" in conjunction with "Lotus" would also amount to passing off by the respondents/defendants of their product as the product of the appellant herein. We have concluded that the usage of the phrase "Lotus Splash" by the respondents is "use" as a trade mark by the respondents as per Section 2(2)(c)of the Act and as such the appellant shall be entitled to the protection under Section 29 and the exception as contemplated under

Section 30(2)(a) of the Act would not be applicable.

60. On the issue of whether a case for the broader remedy of passing off has been made out or not, given our aforesaid *prima facie* finding on the aspect that the requirements of Section 29 of the Act are fulfilled by the respondent/defendants and are found to be infringing the mark of the appellant, we are of the view that the issue may not be required to be gone into, at this stage. The appellant would be within its right to canvass this point at the time of final hearing of the suit.

61. Insofar as the judgments in the cases of ***Marico Ltd. (supra), Cadila Health Care Limited v. Gujarat Co-Operative Milk marketing Federation Ltd. & Ors. ILR (2010) II Delhi 85, Hamdard National Foundation (supra), Wander (supra)*** and ***Ace Technologies Corporation (supra)*** relied upon by Mr. Krishnan, to support his case are concerned, we are of the following opinion:

(a) The case of the parties herein is factually different from those in the case of ***Marico (supra)*** as in that case the mark of the appellant being "LOW ABSORB" was held to be descriptive since it was indicative of the characteristics of the product. However, in the present case, the mark "Lotus Splash" in our considered *prima facie* opinion cannot be held to be descriptive, since the terms "Lotus Splash" is being exhibited as a trade mark and requires a certain degree of imagination to come to a conclusion regarding the characteristics.

(b) Insofar as the reliance in the case of ***Cadila Healthcare Ltd. v.***

Gujarat Co-operative Milk Marketing Federation Ltd. (supra) wherein the mark in question was "SUGAR FREE" which was also held to be descriptive and had not acquired distinctiveness. Here in the case at hand, the scenario is different to the extent that the term "Lotus Splash" is being used in the trade mark sense, it is not part of a sentence or a catchy legend so as to describe the characteristic features of its product. We are unable to agree with the submission of Mr. Krishnan that, here the label of the respondents is according to their case accompanied by "Lotus Splash" as well as a second descriptor "*conditioning cleanser with lotus and bioflavonoids*" and lastly one representation of the mark "82°E". Hence, this judgment does not aid the case of the respondents.

(c) Suffice to state the facts in the case of ***Marico Ltd. (supra)*** and ***Cadila Halth Care Limited v. Gujarat Co-Operative Milk marketing Federation Ltd. (surpa)*** are distinguishable, unlike the facts in this case where an endeavor is made by the respondents/defendants to use "Lotus Splash" as a mark/sub mark for the reasons already highlighted by us in the aforesaid paragraphs.

(d) Whereas the reliance on the judgments in the cases of ***Wander (supra)*** and ***Ace Technologies Corp (supra)*** does not aid the case of the respondents for the reason that the facts in both the cases are diametrically different to the present case at hand. The reliance on the said judgment has been placed to state that there is no perversity in the impugned judgment. For the reasons stated above we do not

agree with this submission of Mr. Krishnan.

(e) Mr. Krishnan has also relied on the judgment in the case of ***Hamdard National Foundation (supra)*** to state that the phrase "Lotus Splash" cannot be dissected while examining the issue of infringement under Section 29. In this regard we refer to the case of ***Pernod Ricard India Pvt. Ltd. & Anr. V. Karamveer Singh Chhabra 2025 SCC Online SC 1701*** wherein the Supreme Court has clearly explained the Anti-Dissection Rules and the Dominant Feature Test. We are of the view that on applications of the settled position of law including Anti-Dissection Rule, Dominant Feature Test, Overall Similarity Test and perspective of the Average Consumer, we hold that the appellant must be granted an injunction at a *prima facie* stage.

62. We do not agree on the aspect of the respondents' case falling under the exception of Section 30(2)(a) of the Act as discussed by the learned Single Judge in paragraphs 60 to 81 of the impugned judgment.

63. We allow the application for temporary injunction being I.A. No. 12308/2023 under Order XXXIX Rules 1 and 2 of the CPC in CS (COMM) 454/2023. We grant the prayer for temporary injunction and restrain the respondents, their directors, partners, owners, dealers, distributors, agents, stockiest and servants, employees, assigns and all other persons acting on their behalf from manufacturing, selling, importing, exporting, offering for sale, advertising, directly or indirectly dealing in Cosmetics, Beauty and Hygiene products under the impugned trade mark "Lotus Splash" or "Lotus"

derivative marks or any other identical and/or deceptively similar trade marks to that of the plaintiffs trade mark being “Lotus” whether being used independently or with any prefix or suffix till the final disposal of the suit.

64. Needless to state that our findings herein are of a *prima facie* nature and shall not have any bearing on the final outcome of the suit.

65. This appeal is allowed in the above terms. CM APPL. 14991/2024 seeking a temporary injunction during the pendency of this appeal is disposed of as having become infructuous.

V. KAMESWAR RAO, J

VINOD KUMAR, J

FEBRUARY 16, 2026
SR/RT