2025 INSC 981

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10638 OF 2025
[Arising out of SLP (C) No. 28489 OF 2023]

PERNOD RICARD INDIA PRIVATE LIMITED & ANOTHER .... APPELLANTS

VERSUS

KARANVEER SINGH CHHABRA .... RESPONDENT

J U D G M E N T

R. MAHADEVAN, J.

Leave granted. For the sake of convenience and in order to facilitate a structured analysis, this judgment is arranged under the following heads:

Sl. No.	HEADINGS	PAGE NO.
I	INTRODUCTION	03
II	FACTUAL MATRIX	05
III	CONTENTIONS OF THE PARTIES	08

IV	**ISSUE FOR CONSIDERATION**	**17**
V	**STATUTORY FRAMEWORK – OVERVIEW OF RELEVANT PROVISIONS FROM THE TRADE MARK ACT, 1999**	**18**
VI	**JUDICIAL PRONOUNCEMENTS**	**27**
VII	**ANALYSIS AND APPLICATION OF LEGAL PRINCIPLES**	**48**
	(A) SIMILARITY AND DISTINCTIVENESS - NAME, COLOUR SCHEME, AND TRADE DRESS	**58**
	(B) ANTI-DISSECTION RULE	**62**
	(C) DOMINANT FEATURE TEST	**65**
	(D)NO EXCLUSIVE RIGHT OVER COMMON OR DESCRIPTIVE TERMS	**68**
	(E)AVERAGE CONSUMER TEST AND IMPERFECT RECOLLECTION	**70**
	(F)LEGAL PRINCIPLES GOVERNING GRANT OF INTERIM INJUNCTION	**74**
VIII	**RECENT EVOLUTION OF TRADEMARK JURISPRUDENCE IN THE UK – THE POST-SALE CONFUSION DOCTRINE**	**82**
IX	**SUMMARY OF FINDINGS**	**91**
X	**CONCLUSION**	**97**

I. INTRODUCTION

1. The Law of trademarks has been aptly described by Justice Frankfurter of the United States Supreme Court in the following words:

> *"The protection of trademarks is the law's recognition of the psychological function of symbols. If it is true that we live by symbols, it is no less true that we purchase goods by them. A trademark is a merchandising shortcut which induces a purchaser to select what he wants, or what he has been led to believe he wants. The owner of a trademark exploits this human propensity by making every human effort to impregnate the atmosphere of the market with the drawing power of a congenial symbol. Whatever the means employed, the aim is the same – to convey through the mark, in the minds of potential customers, the desirability of the commodity upon which it appears. Once this is attained, the trademark owner has something of value. If another poaches upon the commercial magnetism of the symbol he has created, the owner can obtain legal redress".*

– ***Mishawaka Rubber and Woolen Manufacturing Co. v. S.S. Kresge Co.***[1]

2. Trademarks are central to the identity, survival, and growth of any business operating in a competitive commercial environment. They enable enterprises to establish consumer trust and preserve the goodwill built over time through substantial investments in quality, service, and brand visibility. For consumers, trademarks serve as indicators of the source and consistent quality of goods or services across different providers, thereby enabling them to make informed choices, which may, at a minimum, affect taste and preference, and at a maximum, impact their health and well-being. It is, therefore, imperative that

[1] 316 US 203 (1942)

intellectual property rights are robustly protected against infringing entities that seek to unfairly capitalize on another's goodwill, to the detriment of both the rightful owner and the end consumer.

3. At the heart of trademark law lies the foundational principle that there must be no likelihood of confusion in the mind of the average consumer. In cases involving composite marks, it is not necessary that the impugned mark replicate the original in its entirety; even partial imitation may amount to infringement or passing off if it evokes an association with the registered or prior-used mark in the consumer's mind.

4. However, the application of this principle is nuanced. Courts are not expected to adopt a mechanical, side-by-side comparison of the marks. Rather, judicial scrutiny is guided by interpretative doctrines such as the anti-dissection rule and the doctrine of the dominant mark, *inter alia,* other well-established tests. Although these principles are frequently applied in tandem, they do not always align perfectly, and courts have differed in their application depending on the specific facts and context of each case.

5. The present case offers an opportunity for this Court to clarify the appropriate analytical framework for evaluating competing trademarks. While the anti-dissection rule – which requires the mark to be considered as a whole – has

statutory foundation under the Trade Marks Act, 1999, the doctrine of the dominant mark is a judicially evolved principle, aimed at identifying the essential or memorable component of a mark that is likely to influence consumer perception. The purpose of this doctrine is to determine whether the impugned mark creates a deceptive association in the minds of consumers, thereby enabling the defendant to unjustly benefit from the plaintiff's established reputation. This analysis is guided by the perspective of an average consumer with imperfect recollection, who is not expected to retain or compare marks with exact precision.

II. FACTUAL MATRIX

6. This appeal arises from the judgment dated 03.11.2023 passed by the High Court of Madhya Pradesh at Indore[2] in Misc. Appeal No. 232 of 2021, whereby the High Court dismissed the appellants' challenge to the order dated 26.11.2020 passed by the Commercial Court (District Judge Level), Indore[3] in Case No. COMMS 3 of 2020 and IA No.01 of 2020.

7. By the order dated 26.11.2020, the Commercial Court rejected the application filed by the appellants under Order XXXIX Rules 1 and 2 of the Code

[2] Hereinafter referred to as "the High Court"
[3] For short, "the Commercial Court"

of Civil Procedure[4]. For ease of reference, the reliefs sought in the interlocutory application are reproduced below:

> *"... to grant an order of interim injunction restraining the Defendant, its proprietors, partners as the case may be, assigns in business, sister concerns, associates, agents, dealers, distributors, stockists, etc. from manufacturing, selling, offering for sale, advertising in any manner including on the internet, directly or indirectly dealing in whisky or any alcoholic or non-alcoholic beverages under the trade mark LONDON PRIDE and/or label and/or packaging and/or any other label/packaging and/or trade mark that may be identical/deceptively similar to IMPERIAL BLUE label or packaging and/or deceptively similar to the trade mark BLENDERS PRIDE and/or SEAGRAM'S amounting to infringement of Plaintiffs' trademark registrations and/or copyright and/or passing off and/or unfair competition."*
>
> *"... in view of the facts and circumstances of the present case and in the interest of justice and the public interest, an ex parte ad interim injunction in the aforementioned terms may kindly be passed in favour of the Plaintiffs / Applicants and against the Defendant."*

8. According to the appellants, they are engaged in the manufacture and distribution of wines, liquors, and spirits. They sell whisky under the brand names 'BLENDERS PRIDE' and 'IMPERIAL BLUE', both of which are registered trademarks. The appellants also hold a registered trademark for 'SEAGRAM'S', which serves as the house mark of Appellant No.1, and is used both in India and internationally across various product lines.

9. On 05.02.1945, the appellants' predecessor *viz.*, Seagram Company Limited obtained registration of the trademark SEAGRAM'S *vide* Registration

[4] For short, "CPC"

No. 105507 in Class 33, in respect of "*Whisky*". Later, on 25.03.1994, registration of the trademark 'BLENDERS PRIDE' was obtained *vide* Registration No. 623365 in Class 33, covering "Wines, Spirits and Liqueurs". The trademark 'BLENDERS PRIDE' was coined and adopted by the appellants' predecessor, and has been in extensive worldwide use since 1973 for whisky products.

10. In 1995, 'BLENDERS PRIDE' whisky was launched in India, and achieved an annual turnover exceeding INR 1,700 Crores for the financial year 2019-20. In 1997, the appellants' predecessor launched whisky under the trademark 'IMPERIAL BLUE' in India. On 28.06.2016, they secured registration of the 'IMPERIAL BLUE' device, *vide* Registration No. 3296387 in Class 33, for "Alcoholic beverages, except beers", followed by Registration No. 3327621 on 03.08.2016 for the same mark in the same class. The brand 'IMPERIAL BLUE' achieved an annual turnover exceeding INR 2,700 Crores for the financial year 2018-19. Both brands today enjoy formidable goodwill and reputation, domestically and internationally.

11. In May 2019, the appellants became aware that the respondent has been marketing whisky under the mark 'LONDON PRIDE', using packaging that was deceptively similar to that of the appellants. The mark adopted by the respondent was not only phonetically and visually similar to 'BLENDERS PRIDE', but also copied the colour combination, get-up and trade dress of 'IMPERIAL BLUE'

label. Further, the respondent used 'SEAGRAM'S' embossed bottles of the appellants' mark 'IMPERIAL BLUE', for the sale of its LONDON PRIDE whisky, which also amounts to an infringement of the appellants' registered SEAGRAM'S trademark.

12. Aggrieved by the respondent's actions, the appellants instituted Civil Suit No. 3 of 2020 before the Commercial Court, seeking a decree of permanent injunction restraining the respondent from trademark infringement, passing off, copyright violation, and also prayed for reliefs, such as, rendition of accounts, damages, and delivery up of infringing material. An application under Order XXXIX Rules 1 and 2 CPC, was also filed seeking an interim injunction.

13. By order dated 26.11.2020, the Commercial Court dismissed the interim injunction application. Challenging the same, the appellants approached the High Court by filing Misc. Appeal No. 232 of 2021, which was also dismissed *vide* judgment dated 03.11.2023, which is impugned in the present appeal.

III. CONTENTIONS OF THE PARTIES

14. Assailing the judgment passed by the High Court, the learned Senior Counsel for the appellants made the following submissions:

14.1. The present case involves elements of both trademark infringement and passing off. The respondent has dishonestly adopted trademarks deceptively

similar to the appellants' well-known and registered marks – 'BLENDERS PRIDE', 'IMPERIAL BLUE', and 'SEAGRAM'S' – used for whisky, which enjoy significant commercial reputation in India and internationally.

14.2. The appellants' trademarks are duly registered and protected under Sections 28 and 29 of the Trade Marks Act, 1999. 'BLENDERS PRIDE' has been in continuous use since 1995, with annual sales exceeding INR 1,700 Crores; 'IMPERIAL BLUE' has been in use since 1997, with annual sales exceeding INR 2,700 Crores. In contrast, the respondent has only a pending application for the mark 'LONDON PRIDE' and has failed to justify its adoption of a deceptively similar mark.

14.3. The imitation of two established brands – 'BLENDERS PRIDE' and 'IMPERIAL BLUE' – by the respondent is neither coincidental nor innocent; it is a deliberate and dishonest attempt to misappropriate the appellants' goodwill and reputation, thereby creating confusion or association with the appellants' goods. This conduct constitutes both trademark infringement and passing off.

14.4. The Appellate Court failed to apply the test of deceptive similarity laid down by this Court in ***Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories***[5], where it was held that once the essential features of a registered mark are copied, differences in get-up, packaging, or additional writing are immaterial. Similarly, in ***Amritdhara Pharmacy v. Satyadeo Gupta***[6]

[5] AIR 1965 SC 980
[6] AIR 1963 SC 449

this Court held that marks must be compared as a whole, without dissecting or excluding any part. The Appellate Court erroneously dissected the mark 'BLENDERS PRIDE' and compared "BLENDERS" with "LONDON", ignoring the distinctive and dominant component "PRIDE" – thus violating both the anti-dissection rule and the doctrine of overall similarity.

14.5. In an infringement analysis, the test is whether there is a likelihood of confusion or association in the mind of the public. This is a matter for judicial determination and not dependent on testimonial evidence. The law protects against the likelihood of confusion itself; there is no requirement to prove actual deception or damage. Trademarks are remembered by their overall commercial impression, and even minor variations may be perceived by consumers as brand extensions or sub-brands.

14.6. In the present case, the composite mark 'LONDON PRIDE' is deceptively similar to the registered word mark 'BLENDERS PRIDE'. Both are used for identical goods – Indian Made Foreign Liquor (IMFL Whisky) – and are sold through the same trade channels. The term 'PRIDE' which is neither generic nor descriptive in the context of alcoholic beverages, forms the essential and dominant part of the appellants' mark. The respondent's use of this term, combined with another descriptive term, results in an overall similarity that is likely to mislead an average consumer with imperfect recollection.

14.7. The label and packaging of ‘LONDON PRIDE’ constitute a colourable imitation of the registered trademarks associated with ‘IMPERIAL BLUE’, including the label, packaging, and bottle design. Despite acknowledging the principle of overall comparison, the Appellate Court erred by dissecting individual elements rather than assessing the overall visual impression created by the competing marks.

14.8. The Appellate Court placed undue emphasis on the dissimilarity between the word marks ‘IMPERIAL BLUE’ and ‘LONDON PRIDE’ while overlooking the visual similarities in colour scheme, layout, and overall packaging. It is well settled that the use of a deceptively similar logo alone can amount to infringement of a registered device mark.

14.9. The Appellate Court erred in applying Sections 15(1) and 17(2) of the Trade Marks Act, 1999, despite the appellants not claiming exclusive rights over the word ‘PRIDE’ *per se,* but only over the composite mark ‘BLENDERS PRIDE’ as a whole, protected under Section 17(1). The finding that ‘PRIDE’ is *publici juris*, is flawed, as the respondent produced no evidence of actual or widespread use in the trade. Mere entries in the Trademark Register are legally

insufficient, as held in ***Corn Products Refining Co. v. Shangrila Food Products***[7]**,** **and** ***National Bell Co. v. Metal Goods Manufacturing Co.***[8].

14.10. The Courts below erroneously relied on the overruled decision in ***S.M.Dychem v. Cadbury India*** **Ltd**[9], which emphasized dissimilarities in marks. The binding decision in ***Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd.*** [10] requires an assessment of overall similarity from the perspective of an average consumer with imperfect recollection.

14.11. Reliance was placed on ***T.V. Venugopal v. Ushodaya Enterprises***[11]**,** ***Midas Hygiene Industries (P) Ltd v. Sudhir Bhatia***[12], and ***Heinz Italia v. Dabur India Ltd***[13], which held that in cases of dishonest adoption, injunctive relief must follow in order to uphold commercial integrity and protect consumer interest.

14.12. The Appellate Court wrongly presumed that consumers of IMFL whisky are discerning and literate, thereby ruling out the likelihood of confusion. However, the test of imperfect recollection applies regardless of a consumer's education or economic background. In ***Cadila Health Care ltd v. Cadila***

---

[7] AIR 1960 SC 142
[8] (1970) 3 SCC 665
[9] 2000 (5) SCC 573
[10] AIR 2001 SC 1952 : AIR 2001 SC 1952
[11] (2011) 4 SCC 85
[12] (2004) 3 SCC 90
[13] (2007) 6 SCC 1

Pharmaceuticals Ltd (supra), this Court affirmed that similarity between marks must be assessed from the perspective of an average consumer with imperfect recollection.

14.13. The respondent's reliance on ***Khoday Distilleries Ltd v. Scotch Whisky Association***[14] is misplaced. That decision involved a claim that the use of the term "SCOT" in the mark 'PETER SCOT' might mislead consumers into believing the product was Scotch whisky. The Court held that such consumers were discerning, but the context was specific to origin misrepresentation. The present case involves not the geographic origin of whisky, but deceptive similarity between brands. Moreover, *Khoday Distilleries* was not a case of trade mark infringement or passing off, but one concerning cancellation of registration under Section 9 of the Trade Marks Act, and is therefore inapplicable.

14.14. The continuous use of SEAGRAM'S embossed bottles by the respondent constitutes an infringement of the appellants' registered word mark. However, the Appellate Court failed to return any finding on this crucial issue.

14.15. Reference was made to the concept of "Injurious association", wherein the similarity of brands leads consumers to associate the defendant's product with

[14] 2008 (10) SCC 723

that of the plaintiff, thereby misappropriating the plaintiff's goodwill. Such misappropriation causes irreparable harm – greater than mere monetary loss – because it undermines the brand identity and reputation built over decades. The structural similarity between 'BLENDERS PRIDE' and 'LONDON PRIDE', is likely to create an assumption that the two originate from the same source or that one is a variant of the other. Such mis-association is actionable and warrants injunctive relief.

14.16. "Initial interest confusion" arises, where consumers are initially drawn to a product due to its similar branding, even if they realise prior to purchase that it is not the original. Courts have held that such conduct still constitutes misappropriation of goodwill. This principle is directly applicable to the present case. In this regard, reliance was placed on ***Baker Hughes Ltd v. Hiroo Khushalani***[15].

14.17. The appellants have established a *prima facie* case of both infringement and passing off. Their marks have been in continuous and extensive use for over three decades, and enjoy substantial goodwill. In contrast, the respondent entered the market only in 2018 and lacks any statutory or proprietary rights.

[15] (2004) 12 SCC 628

14.18. Accordingly, the impugned judgment dated 03.11.2023 is liable to be set aside, and that the appellants are entitled to interim injunction to protect their statutory and proprietary rights, and to restrain the respondent from continuing its infringing and unlawful conduct.

15. Per contra, the learned Senior Counsel for the Respondent submitted that the respondent is the proprietor of the trademark 'LONDON PRIDE' and all associated intellectual property. The respondent has been manufacturing and marketing liquor under the said brand name in the State of Madhya Pradesh. It was submitted that the respondent is the sole applicant for registration of the mark 'LONDON PRIDE', and no other party has ever sought registration under the same or similar name. Accordingly, the respondent claims exclusive rights over the mark 'LONDON PRIDE', including its distinctive elements and the goodwill attached thereto. It was further contended that the respondent's mark is entirely dissimilar in name, appearance, and composition from any of the appellants' earlier registered trademarks. The brand 'LONDON PRIDE' is also registered with the Excise Department of Madha Pradesh. According to the learned counsel, there exists no visual, phonetic, or structural similarity between their mark and those of the appellants. The appellants, therefore, lack a *prima facie* case, and the elements of irreparable harm and balance of convenience are also not in their favour. However, the factual assertions concerning the appellants' trademarks, their registration status, and usage were not disputed.

15.1. Learned Senior Counsel further contended that the label used by the appellants for their products under the trademark 'IMPERIAL BLUE' and the label of the respondent's product sold under 'LONDON PRIDE' are entirely distinct, with no elements of visual or conceptual overlap. It was submitted that there is no deceptive similarity between the labels that could lead to confusion in the minds of consumers.

15.2. It was additionally, submitted that the impugned order represents a proper and lawful exercise of jurisdiction by the Commercial Court, which thoroughly evaluated the marks and packaging of both parties before arriving at its conclusion. A holistic comparison of the trademarks and packaging reveals that the two products are clearly distinguishable. The goods of both parties are sold in sealed boxes, not loose, and the boxes themselves are visually distinct. The colour scheme, typography, logos and other graphical elements are markedly different. It was contended that both the essential features and the overall visual impression of the competing marks are dissimilar.

15.3. Learned Senior Counsel also submitted that to obtain a temporary injunction, the appellants were required to establish actual damage or the likelihood of irreparable harm, which they failed to do. The mere existence of a *prima facie* case is insufficient in law. It must also be shown that the appellants

would suffer irreparable injury that could not be compensated in monetary terms, which is not the case herein.

15.4. Ultimately, it was submitted that the appellants had failed to demonstrate the essential requirements for grant of interim relief – namely, a *prima facie* case, balance of convenience, and irreparable harm. The Courts below, having rightly assessed the factual and legal issues, rejected the prayer for temporary injunction. Thus, no grounds for interference by this Court in appellate jurisdiction are made out by the appellants.

IV. ISSUE FOR CONSIDERATION

16. We have heard the submissions made by the learned Senior Counsel appearing for both parties and carefully perused the materials available on record.

17. The question that arises for consideration in the present appeal is whether the appellants are entitled to the grant of an interim injunction restraining the respondent from using the impugned trademark, get-up, and trade dress – including the packaging – of '**LONDON PRIDE'** on the ground that such use amounts to infringement and/or imitation of the appellants' registered trademarks, namely, '**BLENDERS PRIDE', 'IMPERIAL BLUE',** and **'SEAGRAM'S'.**

V. STATUTORY FRAMEWORK

18. The present dispute directly invokes the statutory protections available under the Trade Marks Act, 1999, particularly in relation to trademark infringement and deceptive similarity. The relevant provisions are extracted and summarized below:

> ***"2. Definitions and interpretation. –*** *(1) In this Act, unless the context otherwise requires, –*
>
> *(h) "**deceptively similar**".— A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion;*
>
> *(m) "**mark**" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof;*
>
> *(q) "**package**" includes any case, box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label, band, ticket, reel, frame, capsule, cap, lid, stopper and cork;*
>
> *(v) "**registered proprietor**", in relation to a trade mark, means the person for the time being entered in the register as proprietor of the trade mark;*
>
> *(w) "**registered trade mark**" means a trade mark which is actually on the register and remaining in force;*
>
> *(zb) "**trade mark"** means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and—*
>
> *(i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and*
>
> *(ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the*

case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark;

***9. Absolute grounds for refusal of registration.**—(1) The trade marks—*
(a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person;
(b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;
(c) which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade,
shall not be registered:

Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.

***11. Relative grounds for refusal of registration.**—(1) Save as provided in section 12, a trade mark shall not be registered if, because of—*
(a) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or
(b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark,
there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

(2) A trade mark which—
(a) is identical with or similar to an earlier trade mark; and
(b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is registered in the name of a different proprietor,
shall not be registered if or to the extent the earlier trade mark is a well-known trade mark in India and the use of the later mark without due cause would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trade mark.

(3) A trade mark shall not be registered if, or to the extent that, its use in India is liable to be prevented—
(a) by virtue of any law in particular the law of passing off protecting an unregistered trade mark used in the course of trade; or
(b) by virtue of law of copyright.

(4) Nothing in this section shall prevent the registration of a trade mark where the proprietor of the earlier trade mark or other earlier right consents to the registration, and in such case the Registrar may register the mark under special circumstances under section 12.
Explanation.—For the purposes of this section, earlier trade mark means— [(a) a registered trade mark or an application under section 18 bearing an earlier date of filing or an international registration referred to in section 36E or convention application referred to in section 154 which has a date of application earlier than that of the trade mark in question, taking account, where appropriate, of the priorities claimed in respect of the trade marks;] (b) a trade mark which, on the date of the application for registration of the trade mark in question, or where appropriate, of the priority claimed in respect of the application, was entitled to protection as a well-known trade mark.

(5) A trade mark shall not be refused registration on the grounds specified in sub-sections (2) and (3), unless objection on any one or more of those grounds is raised in opposition proceedings by the proprietor of the earlier trade mark.

(6) The Registrar shall, while determining whether a trade mark is a well-known trade mark, take into account any fact which he considers relevant for determining a trade mark as a well-known trade mark including—
(i) the knowledge or recognition of that trade mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trade mark;
(ii) the duration, extent and geographical area of any use of that trade mark; (iii) the duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the trade mark applies;
(iv) the duration and geographical area of any registration of or any application for registration of that trade mark under this Act to the extent that they reflect the use or recognition of the trade mark;
(v) the record of successful enforcement of the rights in that trade mark, in particular the extent to which the trade mark has been recognised as a well-known trade mark by any court or Registrar under that record.

(7) The Registrar shall, while determining as to whether a trade mark is known or recognised in a relevant section of the public for the purposes of sub-section (6), take into account—
(i) the number of actual or potential consumers of the goods or services;
(ii) the number of persons involved in the channels of distribution of the goods or services;
(iii) the business circles dealing with the goods or services,
to which that trade mark applies.

(8) Where a trade mark has been determined to be well known in at least one relevant section of the public in India by any court or Registrar, the Registrar shall consider that trade mark as a well-known trade mark for registration under this Act.

(9) The Registrar shall not require as a condition, for determining whether a trade mark is a well-known trade mark, any of the following, namely:—
(i) that the trade mark has been used in India;
(ii) that the trade mark has been registered;
(iii) that the application for registration of the trade mark has been filed in India;
(iv) that the trade mark—
(a) is well-known in; or
(b) has been registered in; or
(c) in respect of which an application for registration has been filed in,
any jurisdiction other than India, or
(v) that the trade mark is well-known to the public at large in India.

(10) While considering an application for registration of a trade mark and opposition filed in respect thereof, the Registrar shall—
(i) protect a well-known trade mark against the identical or similar trade marks;
(ii) take into consideration the bad faith involved either of the applicant or the opponent affecting the right relating to the trade mark.

(11) Where a trade mark has been registered in good faith disclosing the material informations to the Registrar or where right to a trade mark has been acquired through use in good faith before the commencement of this Act, then, nothing in this Act shall prejudice the validity of the registration of that trade mark or right to use that trade mark on the ground that such trade mark is identical with or similar to a well-known trade mark.

15. Registration of parts of trade marks and of trade marks as a series.—
(1) Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the whole and the part as separate trade marks.
(2) Each such separate trade mark shall satisfy all the conditions applying to and have all the incidents of, an independent trade mark.
(3) Where a person claiming to be the proprietor of several trade marks in respect of the same or similar goods or services or description of goods or description of services, which, while resembling each other in the material particulars thereof, yet differ in respect of—
(a) statement of the goods or services in relation to which they are respectively used or proposed to be used; or
(b) statement of number, price, quality or names of places; or

(c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or
(d) colour,
seeks to register those trade marks, they may be registered as a series in one registration.

17. Effect of registration of parts of a mark.*— (1) When a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken as a whole.*
(2) Notwithstanding anything contained in sub-section (1), when a trade mark—
(a) contains any part—
(i) which is not the subject of a separate application by the proprietor for registration as a trade mark; or
(ii) which is not separately registered by the proprietor as a trade mark; or
(b) contains any matter which is common to the trade or is otherwise of a non-distinctive character,
the registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered.

27. No action for infringement of an unregistered trade mark*.— (1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark.*
(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods or services as the goods of another person or as services provided by another person, or the remedies in respect thereof."

28. Rights conferred by registration.*—(1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.*
(2) The exclusive right to the use of a trade mark given under sub-section (1) shall be subject to any conditions and limitations to which the registration is subject.
(3) Where two or more persons are registered proprietors of trade marks, which are identical with or nearly resemble each other, the exclusive right to the use of any of those trade marks shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by any one of those persons as against any other of those persons merely by registration of the trade marks but each of those persons has otherwise the same rights as against other persons (not being registered users using by way of permitted use) as he would have if he were the sole registered proprietor.

29. Infringement of registered trade marks.—*(1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.*

(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—

(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or

(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or

(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark,

is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

(3) In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.

(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which—

(a) is identical with or similar to the registered trade mark; and

(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and

(c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.

(5) A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade mark is registered.

(6) For the purposes of this section, a person uses a registered mark, if, in particular, he—

(a) affixes it to goods or the packaging thereof;

(b) offers or exposes goods for sale, puts them on the market, or stocks them for those purposes under the registered trade mark, or offers or supplies services under the registered trade mark;

(c) imports or exports goods under the mark; or

(d) uses the registered trade mark on business papers or in advertising.

(7) A registered trade mark is infringed by a person who applies such registered trade mark to a material intended to be used for labeling or packaging goods, as a business paper, or for advertising goods or services, provided such person,

when he applied the mark, knew or had reason to believe that the application of the mark was not duly authorized by the proprietor or a licensee.
(8) A registered trade mark is infringed by any advertising of that trade mark if such advertising—
(a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or
(b) is detrimental to its distinctive character; or
(c) is against the reputation of the trade mark.
(9) Where the distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation and reference in this section to the use of a mark shall be construed accordingly.

***135. Relief in suits for infringement or for passing off.**—(1) The relief which a court may grant in any suit for infringement or for passing off referred to in section 134 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or an account of profits, together with or without any order for the delivery-up of the infringing labels and marks for destruction or erasure.*
(2) The order of injunction under sub-section (1) may include an ex parte injunction or any interlocutory order for any of the following matters, namely:—
(a) for discovery of documents; (b) preserving of infringing goods, documents or other evidence which are related to the subject-matter of the suit;
(c) restraining the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.
(3) Notwithstanding anything contained in sub-section (1), the court shall not grant relief by way of damages (other than nominal damages) or on account of profits in any case—
(a) where in a suit for infringement of a trade mark, the infringement complained of is in relation to a certification trade mark or collective mark; or (b) where in a suit for infringement the defendant satisfies the court—
(i) that at the time he commenced to use the trade mark complained of in the suit, he was unaware and had no reasonable ground for believing that the trade mark of the plaintiff was on the register or that the plaintiff was a registered user using by way of permitted use; and
(ii) that when he became aware of the existence and nature of the plaintiff's right in the trade mark, he forthwith ceased to use the trade mark in relation to goods or services in respect of which it was registered; or
(c) where in a suit for passing off, the defendant satisfies the court—
(i) that at the time he commenced to use the trade mark complained of in the suit, he was unaware and had no reasonable ground for believing that the trade mark for the plaintiff was in use; and

(ii) that when he became aware of the existence and nature of the plaintiff's trade mark he forthwith ceased to use the trade mark complained of."

18.1. A plain reading of the above provisions indicates that Section 2(h) defines "deceptively similar" as a mark that so nearly resembles another mark as to be likely to cause confusion or deception. This definition forms the cornerstone of the test applied in registration refusals and infringement disputes. Section 2(m), (q), (v), (w), (zb) respectively define mark, package, registered proprietor, registered trademark, and trademark, laying the foundational terms used throughout the Act.

18.2. Section 9(1) bars registration of trademarks that are deceptive, non-distinctive, or commonly used in trade. However, the proviso carves out an exception where such marks have acquired distinctiveness through prolonged and exclusive use – commonly referred to as having acquired a "secondary meaning".

18.3. Section 11 prohibits registration of marks identical or similar to earlier marks for identical or similar goods or services, where a likelihood of confusion exists. It further extends protection to well-known trademarks, even across dissimilar goods or services, thereby recognizing the doctrine of dilution.

18.4. Section 15 permits registration of series marks, provided that the differences between them do not materially affect their identity. Section 17

clarifies that exclusive rights are granted over the mark as a whole (sub-section (1)), while sub-section (2) ensures that generic or non-distinctive elements within a composite mark are not monopolized individually.

18.5. Section 27(2) recognizes the common law remedy of passing off, thereby ensuring that rights in an unregistered trademark can still be protected based on prior use.

18.6. Section 28 confers on the registered proprietor exclusive rights to use the trademark and to obtain relief in case of infringement. Section 29 outlines specific instances of infringement:

Sub-section (1) covers identical or deceptively similar marks used for identical goods or services,

Sub-section (2) expands the scope to include similar goods / services likely to cause confusion,

Sub-section (4) protects well-known marks even in cases of dissimilar goods / services provided there is unfair advantage or damage to the mark's reputation,

Significantly, Section 29(3) raises a presumption of confusion when identical marks are used for identical goods/ services, easing the evidentiary burden on the plaintiff.

18.7. Finally, Section 135 empowers courts to grant relief in suits for infringement or passing off. This includes temporary or permanent injunctions,

damages, account of profits, and orders for seizure of infringing goods. Importantly, courts are authorized to grant *ex parte* and interlocutory relief to prevent continued misuse or dilution of trademarks during the pendency of litigation.

18.8. In essence, the Trade Marks Act, 1999 provides a comprehensive statutory framework for protecting registered trademarks, while also preserving the rights of prior users through passing off actions. The Act clearly distinguishes between absolute and relative grounds for refusal of registration and provides effective enforcement mechanisms. Crucially, the guiding test is the likelihood of confusion in the mind of an average consumer – not actual confusion – which serves as the touchstone for both refusal of registration and infringement proceedings. In the present case, the issues of similarity, reputation, and consumer confusion must be analyzed within this statutory scheme.

VI. JUDICIAL PRONOUNCEMENTS

19. Before proceeding further to analyse the facts of the case, we deem it necessary to refer and consider the judicial precedents on trademark infringement and passing off, to assess whether, in the present case, the appellants are entitled to the relief of interim injunction.

19.1. In the Privy Council decision of ***Coca-Cola Company of Canada Ltd. v. Pepsi-Cola Company of Canada Ltd.*** [16] the issue pertained to alleged infringement under the Unfair Competition Act, 1932. Both parties were using their respective marks – Coca-Cola and Pepsi-Cola – for similar non-alcoholic beverages in the same market. The Privy Council upheld the lower court's finding that no infringement had occurred. It observed that although both marks contained the common term "cola", the word was descriptive in nature and not capable of exclusive appropriation. The essential and distinctive features of the competing marks were identified as "Coca" and "Pepsi", which were held sufficient to distinguish the respective goods. The ruling underscored that trademark protection does not extend to ordinary, descriptive, or laudatory terms unless they have acquired a secondary meaning or distinctiveness. Consequently, the mere presence of the shared term "Cola" was held inadequate to establish deceptive similarity or likelihood of confusion. The relevant paragraphs of the decision are extracted below for ready reference:

> *"4. The contemporaneous use of both marks in the same area in association with wares of the same kind is not in dispute. The actual question for decision in the present case may, therefore, in the light of the above definition be stated thus — Does the mark used by the defendant so resemble the plaintiff's registered mark or so clearly suggest the idea conveyed by it, that its use is likely to cause dealers in or users of non-alcoholic beverages to infer that the plaintiff assumed responsibility for the character or quality or place of origin of Pepsi-Cola? The President of the Exchequer Court answered the question in the affirmative; the Supreme Court answered it in the negative. Their Lordships are in agreement with the Supreme Court.*

[16] 1942 SCC OnLine PC 7 : AIR 1942 PC 40 (5J)

5. The case appears to them to be one which is free from complications, and which raises neither new matter of principle nor novel question of trademark law. The only peculiar feature of the case is the dearth of evidence, attributable doubtless to the procedure adopted by the plaintiff at the trial. The only matters proved before the plaintiff's case was closed were (1) the plaintiff's registered mark and (2) the user by the defendant of the mark alleged to be an infringement. No evidence of (to put it shortly) confusion either actual or probable was adduced. It was contended that a statement by a witness called by the defendant (one Charles Guth) was proof of actual confusion. Guth was general manager of a United States company which owns the capital stock of the defendant. He was also President of a New York company called Loft Incorporated which owned a large number of candy stores in New York at which Coca-Cola was sold. Subsequently the sale of Coca-Cola was discontinued, and Pepsi-Cola was sold at the stores. A passing off action was brought by the Delaware Coca-Cola Company against Loft Incorporated. The judge of the Court of Chancery, Delaware, dismissed the action holding that Loft Incorporated was not responsible for the acts of its agents of which evidence had been given. In the course of his cross-examination in the Exchequer Court Guth was asked "Then you have no quarrel with the Chancellor's decision as to the facts expressed in his opinion?" and he answered "None at all." It was argued that this answer proved the fact found in the judgment of the Chancellor viz. (as quoted by the President of the Exchequer Court from a report of the case) that "the uncontradicted evidence shows that substitutions were made by employees of the defendants of a product other than Coca-Cola for that beverage when calls for the same were made."

6. The learned President relied on this judgment "as very formidable support to the plaintiff's contention that ... there is likelihood of confusion"; but in their Lordships' opinion he was not entitled to refer to or rely upon a judgment given in proceedings to which neither the plaintiff nor the defendant was a party, as proving the facts stated therein. Those facts are in no way proved thereby, nor are they in any way proved by the answer of Guth which has been quoted above. Guth could not of his own knowledge either quarrel or agree with the Chancellor's decision as to what it was that had happened in the numerous stores, and was described by the word "substitutions". There was accordingly no evidence before the Exchequer Court of confusion actual or probable. In these circumstances, the question for determination must be answered by the Court, unaided by outside evidence, after a comparison of the defendant's mark as used with the plaintiff's registered mark, not placing them side by side, but by asking itself whether, having due regard to relevant surrounding circumstances, the defendant's mark as used is similar (as defined by the Act) to the plaintiff's registered mark as it would be remembered by persons possessed of an average memory with its usual imperfections.

7. In the present case two circumstances exist which are of importance in this connexion. The first is the information which is afforded by dictionaries in

relation to the word "Cola". While questions may sometimes arise as to the extent to which a Court may inform itself by reference to dictionaries there can, their Lordships think, be no doubt that dictionaries may properly be referred to in order to ascertain not only the meaning of a word, but also the use to which the thing (if it be a thing) denoted by the word is commonly put. A reference to dictionaries shows that Cola or Kola is a tree whose seed or nut is "largely used for chewing as a condiment and digestive" (Murray), a nut of which "the extract is used as a tonic drink" (Webster), and which is "imported into the United States for use in medical preparations and summer drinks" (Encyclopaedia Americana). Cola would therefore appear to be a word which might appropriately be used in association with beverages and in particular with that class of non-alcoholic beverages colloquially known by the description of "soft drinks". That in fact the word "Cola" or "Kola" has been so used in Canada is established by the second of the two circumstances before referred to. The defendant put in evidence a series of 22 trade marks registered in Canada from time to time during a period of 29 years, viz., from 1902 to 1930, in connexion with beverages. They include the mark of the plaintiff and the registered mark of the defendant. The other 20 marks consist of two or more words or a compound word, but always containing the word "Cola" or "Kola". The following are a few samples of the bulk; — "Kola Tonic Wine" "La-Kola" "Cola-Claret", "Rose-Cola", "Orange Kola" "O'Keefe's Cola", "Royal Cola". Their Lordships agree with the Supreme Court in attributing weight to those registrations as showing that the word Cola (appropriate for the purpose as appears above) had been adopted in Canada as an item in the naming of different beverages. The proper comparison must be made with that fact in mind.

8. Numerous cases were cited in the Courts of Canada and before the Board in which the question of infringement of various marks has been considered and decided; but except when some general principle is laid down, little assistance is derived from authorities in which the question of infringement is discussed in relation to other marks and other circumstances. The plaintiff claimed that by virtue of S. 23(5)(b), Unfair Competition Act, 1932 its registered mark was both a word mark and a design mark; and their Lordships treat it accordingly. If it be viewed simply as a word mark consisting of g "Coca" and "Cola" joined by a hyphen, and the fact be borne in mind that Cola is a word in common use in Canada in naming beverages, it is plain that the distinctive feature in this hyphenated word, is the first word "Coca" and not "Cola". "Coca" rather than "Cola" is what would remain in the average memory. It is difficult indeed impossible, to imagine that the mark Pepsi-Cola as used by the defendant, in which the distinctive feature is, for the same reason the first word "Pepsi" and not "Cola", would lead anyone to confuse it with the registered mark of the plaintiff. If it be viewed as a design mark the same result follows. The only resemblance lies in the fact that both contain the word "Cola", and neither is written in block letters, but in script with flourishes. But the letters and flourishes

in fact differ very considerably notwithstanding the tendency of words written in script with flourishes to bear a general resemblance to each other. There is no need to specify the differences in detail; it is sufficient to say that in their Lordships' opinion, the mark used by the defendant, viewed as a pattern or picture, would not lead a person with an average recollection of the plaintiff's registered mark to confuse it with the pattern or picture represented by that mark. In the result their Lordships are of opinion that the trade mark used by the defendant and the registered mark of the plaintiff are not trade marks so nearly resembling each other or so clearly suggesting the idea conveyed by each other that the contemporaneous use of both in the same area in association with wares of the same kind would be likely to cause dealers in or users of such wares to infer that the same person assumed responsibility for their character or quality or for the conditions under which or the class of persons by whom they were produced or for their place of origin. The defendant therefore has not adopted for use in Canada in connexion with its wares a trade mark which in any way offends against the provisions of S. 3, Unfair Competition Act, 1932. Their Lordships will humbly advise His Majesty that this appeal and the cross appeal should be dismissed. The plaintiff will pay the costs of the appeal and the defendant will pay the costs of the cross appeal with the usual set-off.

Appeal dismissed."

19.2. In ***Corn Products Refining Co., v. Shangrila Food Products Ltd.***[17]*,* the appellant, who was the registered proprietor of the trademark *Glucovita* used in relation to glucose-based food products, sought an injunction against the respondent who had commenced marketing a similar product under the mark *Gluvita*. The primary contention was one of deceptive similarity and passing off. This court held that the two marks – *Glucovita* and *Gluvita* – were phonetically and visually similar, and likely to mislead or confuse an average consumer of imperfect recollection. The court, accordingly, granted an injunction restraining

[17] AIR 1960 SC 142

the respondent from using the impugned mark. The following paragraph is apposite in this regard:

> *"15. Now it is a well recognised principle, that has to be taken into account in considering the possibility of confusion arising between any two trademarks, that, where those two marks contain a common element which is also contained in a number of other marks in use in the same market such a common occurrence in the market tends to cause purchasers to pay more attention to the other features of the respective marks and to distinguish between them by those features. This principle clearly requires that the marks comprising the common element shall be in fairly extensive use and, as I have mentioned, in use in the market in which the marks under consideration are being or will be used."*

19.3. In ***Amritdhara Pharmacy v. Satya Deo Gupta*** *(supra),* this Court had extensively analysed the principles governing distinctiveness and likelihood of confusion in trademarks. It held that the marks 'Amritdhara' and 'Lakshmandhara' were deceptively similar, owing to their structural and phonetic resemblance. Reaffirming the anti-dissection rule, the court observed that *an average consumer does not dissect a trademark into its components or analyze its etymology, but perceives the mark as a whole.* Further, the Court noted that both marks were used for similar medicinal products targeted at a wide consumer base, including illiterate and semi-literate individuals. From the standpoint of an average purchaser with imperfect recollection, the overall similarity in sound and structure was likely to cause confusion or deception. Mere etymological or lexical differences were considered immaterial. While several precedents on deceptively similar composite marks were cited, the Court emphasized that each case must be determined on its own facts. The degree of

resemblance sufficient to create confusion cannot be predetermined and must be assessed in light of the overall context. The admissibility of earlier decisions cited was also debated; however, the Court found it unnecessary to rule on their admissibility, as those decisions were not determinative in resolving the issue of deceptive similarity between Amritdhara and Lakshmandhara. The following paragraph from the judgment is apposite:

> *"6. It will be noticed that the words used in the sections relevant for our purpose are "likely to deceive or cause confusion." The Act does not lay down any criteria for determining what is likely to deceive or cause confusion. Therefore, every case must depend on its own particular facts, and the value of authorities lies not so much in the actual decision as in the tests applied for determining what is likely to deceive or cause confusion. On an application to register, the Registrar or an opponent may object that the trade mark is not registerable by reason of cl. (a) of s.8, or sub-s. (1) of s.10, as in this case. In such a case the onus is on the applicant to satisfy the Registrar that the trade mark applied for is not likely to deceive or cause confusion. In cases in which the tribunal considers that there is doubt as to whether deception is likely, the application should be refused. A trade mark is likely to deceive or cause confusion by the resemblance to another already on the Register if it is likely to do so in the course of its legitimate use in a market where the two marks are assumed to be in use by traders in that market….*
>
> *For deceptive resemblance two important questions are: (1) who are the persons whom the resemblance must be likely to deceive or confuse, and (2) what rules of comparison are to be. adopted in judging whether such resemblance exists. As to confusion, it is perhaps an appropriate description of the state of mind of a customer who, on seeing a mark thinks, that it differs from the mark on goods which' he has previously bought, but is doubtful whether that impression is Dot due to imperfect recollection. (See Kerly on Trade Marks, 8th edition, p. 400.) "*
>
> *7. ... We must consider, the overall similarity of the two composite words 'Amritdhara' and 'Lakshmandhara'. We do not think that the learned Judges of the High Court were right in Paying that no Indian would mistake one 'for the other. An unwary purchaser of average intelligence and imperfect recollection would not, as the High Court supposed, split the name into its component parts and consider the etymological meaning thereof or even consider the meanings of the composite words as 'current of nectar' or current of Lakshman'. He would go more by the overall structural and phonetic similarity and the nature of the*

medicine he has previously purchased, or has been told about, or about which has other vise learnt and which he wants to purchase. Where the trade relates to goods largely sold to illiterate or badly educated persons, it is no answer to say that a person educated in the Hindi language would go by the etymological or ideological meaning and, see the difference between 'current of nectar' and current of Lakshman'. 'Current of Lakshman in a literal sense has no meaning to give it meaning one must further make the inference that the 'current or stream' is as pure and strong as Lakshman of the Ramayana. An ordinary Indian villager or townsmen will perhaps know Lakshman, the story of the Ramayana being familiar to him but we doubt if he would etymologine to the extent of seeing the socalled ideological difference between 'Amritdhara' and 'Lakshmandhara'. He would go more by the similarity of the two names in the context of the widely known medicinal preparation which he wants for his ailments. We agree that the use of the word 'dhara' which literally means 'Current or stream' is not by itself decisive of the matter. What we have to consider here is the overall similarity of the composite words, having regard to the circumstance that the goods bearing the two names are medicinal preparations of the same description. We are aware that the admission of a mar is not to be refused, because unusually stupid people, "fools or idiots", may be deceived. A critical comparison of the two names may disclose some points of difference, but an unwary purchaser of average intelligence and imperfect recollection would be deceived by the overall similarity of the two names having regard to the nature of the medicine he is looking for with a somewhat vague recollection that he had purchased a similar medicine on a previous occasion with. a similar name…..

9. Nor do we think that the High Court was. right in thinking that the appellant was claiming a. monopoly in the common Hindi word 'dhara'. We do not think that is quite the position here. What the appellant is claiming is its right under s.21 of the Act, the exclusive right to the use of its trade mark, and to oppose the registration of a trade mark which go nearly resembles its trade mark that it is likely to deceive or cause confusion….

12. On a consideration of all the circumstances, we have come to the conclusion that the overall similarity between the two names in respect of the same description of goods was likely to cause deception or confusion within the meaning of s. 10(1) of the Act and Registrar was right in the view he expressed. The High Court was in error taking a contrary view."

19.4. In ***Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories*** *(supra)***,** the appellant who was the registered proprietor of the trademark 'Navaratna Pharmacy', instituted a suit for infringement and passing

off against the respondent, who was manufacturing ayurvedic medicines under a similar name. The appellant alleged that the respondent's use of the name was likely to cause confusion among consumers. This court held that the claim of infringement was not made out, as the two marks were not sufficiently similar to deceive or confuse the public within the meaning of the Trade Marks Act. However, the Court upheld the passing off claim, observing that the overall similarity in name and trade dress could mislead consumers and adversely affect the goodwill of the appellant's business. The following paragraphs are relevant in this context:

> ***"28. …*** *The finding in favour of the appellant to which the learned counsel drew our attention was based upon dissimilarity of the packing in which the goods of the two parties were vended, the difference in the physical appearance of the two packets by reason of the variation in the colour and other features and their general get-up together with the circumstance that the name and address of the manufactory of the appellant was prominently displayed on his packets and these features were all set out for negativing the respondent's claim that the appellant had passed off his goods as those of the respondent. These matters which are of the essence of the cause of action for relief on the ground of passing off play but a limited role in an action for infringement of a registered trade mark by the registered proprietor who has a statutory right to that mark and who has a statutory remedy for the event of the use by another of that mark or a colourable imitation thereof. While an action for passing off is a Common Law remedy being in substance an action for deceit, that is, a passing off by a person of his own goods as those of another, that is not the gist of an action for infringement. The action for infringement is a statutory remedy conferred on the registered proprietor of a registered trade mark for the vindication of the exclusive right to the use of the trade mark in relation to those goods (Vide Section 21 of the Act). The use by the defendant of the trade mark of the plaintiff is not essential in an action for passing off, but is the sine qua non in the case of an action for infringement. No doubt, where the evidence in respect of passing off consists merely of the colourable use of a registered trade mark, the essential features of both the actions might coincide in the sense that what would be a colourable imitation of a trade mark in a passing off action would also be such in an action for infringement of the same trade mark. But there the correspondence between*

the two ceases. In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark would be immaterial; whereas in the case of passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff.

29**. When once the use by the defendant of the mark which is claimed to infringe the plaintiff's mark is shown to be "in the course of trade", the question whether there has been an infringement is to be decided by comparison of the two marks. Where the two marks are identical no further questions arise; for then the infringement is made out. When the two marks are not identical, the plaintiff would have to establish that the mark used by the defendant so nearly resembles the plaintiff's registered trade mark as is likely to deceive or cause confusion and in relation to goods in respect of which it is registered (Vide Section 21). A point has sometimes been raised as to whether the words "or cause confusion" introduce any element which is not already covered by the words "likely to deceive" and it has sometimes been answered by saying that it is merely an extension of the earlier test and does not add very materially to the concept indicated by the earlier words "likely to deceive". But this apart, as the question arises in an action for infringement the onus would be on the plaintiff to establish that the trade mark used by the defendant in the course of trade in the goods in respect of which his mark is registered, is deceptively similar. This has necessarily to be ascertained by a comparison of the two marks — the degree of resemblance which is necessary to exist to cause deception not being capable of definition by laying down objective standards. The persons who would be deceived are, of course, the purchasers of the goods and it is the likelihood of their being deceived that is the subject of consideration. The resemblance may be phonetic, visual or in the basic idea represented by the plaintiff's mark. The purpose of the comparison is for determining whether the essential features of the plaintiff's trade mark are to be found in that used by the defendant. The identification of the essential features of the mark is in essence a question of fact and depends on the judgment of the Court based on the evidence led before it as regards the usage of the trade. It should, however, be borne in mind that the object of the enquiry in ultimate analysis is whether the mark used by the defendant as a whole is deceptively similar to that of the registered mark of the plaintiff."**

**19.5. In *Parle Products (P) Ltd., v. J.P. & Co., Mysore*[18], ** this Court laid down the test for deceptive similarity in trademark infringement. The dispute concerned the plaintiff's registered trademark and distinctive packaging for "Glucose Biscuits", and the defendant's use of similar packaging and get-up for their biscuits marketed under the name "Glucobiscuit". The Court observed that the two marks, taken with their overall packaging and presentation, were deceptively similar – particularly given the class of consumers targeted, namely children and the general public, who are not expected to conduct a detailed comparison. It was held that an average consumer, possessing imperfect recollection, could easily be misled due to the visual, phonetic, and structural similarities in the competing products. Accordingly, the Court ruled in favour of the plaintiff, and restrained the defendant from continuing use of the impugned mark. The relevant paragraph is extracted below for better appreciation:

> *"9. It is therefore clear that in order to come to the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him. In this case we find that the packets are practically of the same size, the color scheme of the two wrappers is almost the same; the design on both though not identical bears such a close resemblance that one can easily be mistaken for the other. The essential features of both are that there is a girl with one arm raised and carrying something in the other with a cow or cows near her and hens or chickens in the foreground. In the background there is a farm house with a fence. The word "Gluco Biscuits" in one and "Glucose Biscuits" on the other occupy a prominent place at the top with a good deal of similarity between the two writings.*

[18] (1972) 1 SCC 618

Anyone in our opinion who has a look at one of the packets today may easily mistake the other if shown on another day as being the same article which he had seen before. If one was not careful enough to note the peculiar features of the wrapper on the plaintiffs goods, he might easily mistake the defendants' wrapper for the plaintiffs if shown to him some time after he had seen the plaintiffs'. After all, an ordinary purchaser is not gifted with the powers of observation of a Sherlock Holmes. We have therefore no doubt that the defendants' wrapper is deceptively similar to the plaintiffs' which was registered. We do not think it necessary to refer to the decisions referred to at the Bar as in our view each case will have to be, judged on its own features and it would be of no use to note on how many points there was similarity and in how many others there was absence of it."

19.6. In ***Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd***. (supra), it was held that even minor differences may be insufficient if the overall impression conveyed by the marks is likely to deceive or cause confusion. The applicable test is not one of exact or absolute similarity, but whether the essential and distinctive features of the plaintiff's mark have been appropriated by the defendant in a manner likely to mislead or confuse the average consumer. The following paragraph is apposite in this regard:

"16. *Dealing once again with medicinal products, this Court in F. Hoffmann-La Roche & Co. Ltd. v. Geoffrey Manner & Co. (P) Ltd. [(1969) 2 SCC 716] had to consider whether the word "Protovit" belonging to the appellant was similar to the word "Dropovit" of the respondent. This Court, while deciding the test to be applied, observed at pp. 720-21 as follows: (SCC para 7)*

"The test for comparison of the two word marks were formulated by Lord Parker in Pianotist Co. Ltd.'s application [(1906) 23 RPC 774] as follows:

'You must take the two words. You must judge of them, both by their look and by their sound. You must consider the goods to which they are to be applied. You must consider the nature and kind of customer who would be likely to buy those goods. In fact, you must consider all the surrounding circumstances; and you must further consider what is likely to happen if each of those trade marks is used in a normal way as a trade mark for the goods of the respective owners of the marks. If, considering all those circumstances, you come to the conclusion that there will

be a confusion, that is to say, not necessarily that one man will be injured and the other will gain illicit benefit, but that there will be a confusion in the mind of the public which will lead to confusion in the goods — then you may refuse the registration, or rather you must refuse the registration in that case.'

It is necessary to apply both the visual and phonetic tests. In Aristoc Ltd. v. Rysta Ltd. [62 RPC 65] the House of Lords was considering the resemblance between the two words 'Aristoc' and 'Rysta'. The view taken was that considering the way the words were pronounced in English, the one was likely to be mistaken for the other. Viscount Maugham cited the following passage of Lord Justice Lukmoore in the Court of Appeal, which passage, he said, he completely accepted as the correct exposition of the law:

'The answer to the question whether the sound of one word resembles too nearly the sound of another so as to bring the former within the limits of Section 12 of the Trade Marks Act, 1938, must nearly always depend on first impression, for obviously a person who is familiar with both words will neither be deceived nor confused. It is the person who only knows the one word and has perhaps an imperfect recollection of it who is likely to be deceived or confused. Little assistance, therefore, is to be obtained from a meticulous comparison of the two words, letter by letter and syllable by syllable, pronounced with the clarity to be expected from a teacher of elocution. The Court must be careful to make allowance for imperfect recollection and the effect of careless pronunciation and speech on the part not only of the person seeking to buy under the trade description, but also of the shop assistant ministering to that person's wants.'

It is also important that the marks must be compared as wholes. It is not right to take a portion of the word and say that because that portion of the word differs from the corresponding portion of the word in the other case there is no sufficient similarity to cause confusion. The true test is whether the totality of the proposed trade mark is such that it is likely to cause deception or confusion or mistake in the minds of persons accustomed to the existing trade mark. Thus in Lavroma case Lord Johnston said:

'... we are not bound to scan the words as we would in a question of comparatio literarum. It is not a matter for microscopic inspection, but to be taken from the general and even casual point of view of a customer walking into a shop.' "

On the facts of that case this Court came to the conclusion that taking into account all circumstances the words "Protovit" and "Dropovit" were so dissimilar that there was no reasonable probability of confusion between the words either from visual or phonetic point of view."

19.6.1. Further, in the same decision, this Court laid down the parameters to be applied in a passing off action involving deceptive similarity of marks. The relevant paragraph is usefully extracted below:

> ***"35.*** *Broadly stated, in an action for passing-off on the basis of unregistered trade mark generally for deciding the question of deceptive similarity the following factors are to be considered:*
>
> *(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 resemblance between the marks, phonetically similar and hence similar in idea.*
>
> *(c) Th**e 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.*
>
> ***36.*** *Weightage to be given to each of the aforesaid factors depending upon facts of each case and the **same weightage cannot be given to each factor in every case."***

19.7. In ***Khoday Distilleries Limited (Now known as Khoday India Limited) v. Scotch Whisky Association and others*** (supra), this Court addressed the question of whether the use of the expression "Peter Scot" by an Indian manufacturer for whisky amounted to passing off or infringement of the respondents' rights associated with the term "Scotch". The respondents contended that the mark "Peter scot" was deceptively similar to "scotch" and was likely to mislead

consumers into believing that the product had some connection with genuine Scotch whisky originating from Scotland. The appellant however contended that. the mark "Peter Scot" was derived from the founder's son's name and was adopted without any intent to deceive. This Court rejected the plea of deceptive similarity, holding that the term "Scot" in Peter Scot was not sufficient, in and of itself, to mislead or deceive the public into believing that the product originated in Scotland. It was emphasized that the test of deceptive dissimilarly must be applied from the standpoint of an average consumer with imperfect recollection. Mere phonetic similarity the Court held, is not determinative unless it leads to actual or likely confusion. Furthermore, in actions for passing off, an intention to deceive must be established, and mere similarity in names without such intent is insufficient. Although "Scotch" constitutes a protected geographical indication, the Court found that "Peter Scot" was a *bona fide* and honest adoption, not intended to exploit the reputation of Scotch whisky. Ultimately, it was held that no actionable confusion or deception had been proved, and accordingly, the injunction sought by the respondents was rightly declined. The decision reaffirms that the test of deceptive similarity must be applied holistically, having regard to the overall impression created by the mark, rather than focusing merely on phonetic or structural resemblance in isolation. The following paragraphs are pertinent in this regard:

> *"75. The tests which are, therefore, required to be applied in each case would be different. Each word must be taken separately. They should be judged by their look and by their sound and must consider the goods to which they are to be*

applied. Nature and the kind of customers who would likely to buy goods must also be considered. Surrounding circumstances play an important factor. What would be likely to happen if each of those trademarks is used in a normal way as a trade mark of the goods of the respective owners of the marks would also be a relevant factor.

76. Thus, when and how a person would likely be confused is a very relevant consideration.

77. Where the class of buyers, as noticed hereinbefore, is quite educated and rich, the test to be applied is different from the one where the product would be purchased by the villagers, illiterate and poor. Ordinarily, again they, like tobacco, would purchase alcoholic beverages by their brand name. When, however, the product is to be purchased both by villagers and town people, the test of a prudent man would necessarily be applied. It may be true that the tests which are to be applied in a country like India may be different from the tests either in a country of England, the United States of America or Australia.

78. We however, do not mean to suggest that in a case of this nature, the Heightened Scrutiny Test should be applied as urged on behalf of the appellant. Bollinger, J. v. Costa Brava Wine Co. Ltd., whereupon Mr Desai has strongly relied upon, makes such a distinction. Bollinger, J. was a case on demurrer. It was concerned with sale of Spanish champagne. In that case, in para 4 of the application, the applicant stated: (All ER p. 804 B-C)

"Then in Para 4 they deny that this name 'Spanish Champagne' is a false description, and they continue: 'The defendants deny that the said section imposes any statutory duty on the defendants or any statutory duty owed by the defendants to the plaintiffs. Alternatively, if the said section does impose any such statutory duty the same is not actionable at the suit of any of the plaintiffs or at all."

The court proceeded on certain assumptions which are: (Bollinger case, All ER p. 804 F-G)

"(1) The plaintiffs carry on business in a geographical area in France known as Champagne;

(2) the plaintiffs' wine is produced in Champagne and from grapes grown in Champagne;

(3) the plaintiffs' wine has been known in the trade for a long time as 'Champagne' with a high reputation;

(4) members of the public or in the trade ordering or seeing wine advertised as 'Champagne' would expect to get wine produced in Champagne from grapes grown there; and

(5) the defendants are producing a wine not produced in that geographical area and are selling it under the name of 'Spanish Champagne'."

It was noticed: (Bollinger case, All ER p. 805 B-D)

"The well-established action for 'passing off' involves the use of a name or get-up which is calculated to cause confusion with the goods of a particular rival trader, and I think it would be fair to say that the law in this respect has been concerned with unfair competition between traders rather than with the deception of the public which may be caused by the defendant's conduct, for the right of action known as a 'passing-off action' is not an action brought by the member of the public who is deceived but by the trader whose trade is likely to suffer from the deception practised on the public but who is not himself deceived at all."

Before the learned Judge, the plaintiffs claimed that their goodwill in the name or description "champagne" is injured by the defendants' conduct to which the counsel for the defendants did not contest the correctness of the statement. The learned Judge, referring to Mayor of Bradford v. Pickles and laying down the principles of injuries, noticed the argument of the counsel that before a person can negative the argument of the defence counsel, the person can recover for loss or it must be shown that his case falls within the class of actionable wrongs stating: (Bollinger cases, All ER p. 810H-I)

"... But the law may be thought to have failed if it can offer no remedy for the deliberate act of one person which causes damage to the property of another. There are such cases, of course, but they occur, as a rule, when the claims of freedom of action outweigh the interests of the other persons who suffer from the use which a person makes of his own property."

It was in the aforementioned fact situation, the learned Judge proceeded to determine as to whether the description "Spanish champagne" is calculated to deceive, holding that the plaintiff has a right to bring any action.

...

80. Referring to Kerly on Trade Marks, which we have referred to hereinbefore, the learned Judge said: [Bollinger (No. 2) case, All ER p. 566 E-F]

And it has been said that regard should not be had to "unusually stupid people, fools or idiots". Moreover, if the goods are expensive and not of a kind usually selected without deliberation and the customers generally educated persons these are all matters to be considered". (That is also a quotation from the same book.) Various other judicial statements are collected in the judgment of the Assistant Registrar in George Angus & Co. -s Application, Re, RPC at pp. 31-32, to which I was referred.

In arriving at the said decision, the following was specifically noticed (All ER p. 567 B -D)

"Mr Munday, whose wine business was in Swansea, when asked-'How far do you think the class of customers that you deal with know the origin of Champagne?' replied:

'Limited. Some would know. The first category I mentioned would know a fair amount about it. In the second category some. But there would be a considerable number in my area who would know nothing about it except that it was a wine they wanted for a special occasion or for something in their life they wanted to celebrate with. They would then want that. That is how much they would know about it- just a general outline.' "

It was furthermore held: [Bollinger (No. 2) case, All ER pp. 567 1-568 C]

There is thus, in my view, a considerable body of evidence that persons whose life or education has not taught them much about the nature and production of wine, but who from time to time want to purchase Champagne, as the wine with the great reputation, are likely to be misled by the description "Spanish Champagne".

Something was said on the subject of the burden of proof. Well, burden of proof is something which may shift in the course of an action. It appears to me that when the plaintiffs have shown that a description used by the defendants contains an untruthful statement that a wine which is not Champagne is Champagne, they have gone some way to establishing their case, and the Court might require to be satisfied that such an untrue statement was so clearly qualified as to be not likely to mislead. But, however, that may be, I am satisfied on the evidence that a substantial portion of the public are likely to be misled. And as Lord Justice Lindley said in Slazenger & Sons v. Feltham & Co. 50, RPC at p. 537:

"One must exercise one's common sense, and, if you are driven to the conclusion that what is intended to be done is to deceive if possible, I do not think it is stretching the imagination very much to credit the man with occasional success or possible success. Why should we be astute to say that he cannot succeed in doing that which he is straining every nerve to do?"

81. The Bollinger test, 48 was not only applied in Warnink (Erven) BV v. J. 51 Townend & Sons (Hull) Ltd. but in all the cases which have been referred to by Mr Desai to which the different High Courts of India as also to which we have taken note of. However, tests laid down in Australia and the United States in respect of selfsame goods as noticed hereinbefore are somewhat different.

82. But then we are concerned with the class of buyer who is supposed to know the value of money, the quality and content of Scotch whisky. They are supposed to be aware of the difference of the process of manufacture, the place of manufacture and its origin. Respondent 3, the learned Single Judge as also the Division Bench of the High Court, therefore, failed to notice the distinction, which is real and otherwise borne out from the precedents operating in the field. (See Kerly's Law of Trade Marks and Trade Names, 13th Edn., p. 600)

83. Had these tests been applied the matter might have been different. In a given case probably we would not have interfered but we intend to do so only because wrong tests applied led to a wrong result.

84. So far as the applicability of the 1999 Act is concerned, having regard to the provisions of Sections 20(2) and 26(2), we are of the opinion that the 1999 Act will have no application."

19.8. In ***Wander Ltd. v. Antox India (P) Ltd.***[19], this Court elaborated the principles governing the grant or refusal of interim injunctions in trademark infringement and passing off actions. It was underscored that appellate courts ought to be circumspect in interfering with the discretionary orders of lower courts in such matters. Interference is warranted only where the discretion has been exercised arbitrarily, capriciously, perversely, or in disregard of settled legal principles. The following paragraphs from the judgment are reproduced below for present purposes:

"13. *On a consideration of the matter, we are afraid, the appellate bench fell into error on two important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocination as to the quality of Antox's alleged user of the trademark on which the passing-off action is founded. We shall deal with these two separately.*

14. *The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, th* ***e appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions.*** *An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have*

[19] 1990 Supp SCC 727 : 1990 SCC OnLine SC 490

come to a contrary conclusion. ***If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.*** *After referring to these principles Gajendragadkar,J. in Printers (Mysore) Private Ltd. v. Pothan Joseph [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)*

"... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton [1942 AC 130] '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."

The appellate judgment does not seem to defer to this principle.

....

19.9. In ***Anand Prasad Agarwalla v. Tarkeshwar Prasad and others***[20], this Court emphasized that while considering an application for a temporary injunction, the court must avoid conducting a mini-trial or delving into the merits of the case in detail. The exercise at that stage is limited to determining whether a prima facie case exists, along with considerations of balance of convenience and potential irreparable injury. The focus is not to adjudicate the ultimate rights of the parties. The relevant paragraph reads as under:

"6. It may not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction. As noticed by the Division Bench that there are two documents which indicated that there was a prima facie case to be investigated. Unless the sale certificate is set aside or declared to be a nullity, the same has legal validity and force. It cannot be said that no right could be derived from such a certificate. Secondly, when the contesting respondents were in possession as evidenced by the record of rights, it cannot be said that such possession is by a trespasser. The claim of the contesting respondents is in their own right. The decisions referred to by the learned counsel for the appellant are in the context of there being no dispute as to ownership of the land and the possession was admittedly with a stranger and hence temporary injunction is not permissible. Therefore, we are of the view that the Division Bench has very correctly appreciated the matter and come to the conclusion in favour of the

[20] (2001) 5 SCC 568

respondents. In these circumstances, we dismiss these appeals. We may notice that the time-bound directions issued by the Division Bench will have to be adhered to strictly by the parties concerned and the suits should be disposed of at an early date but not later than six months from the date of the communication of this order."

19.10. In a more recent decision in ***Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi and Others***[21], this Court reaffirmed the narrow scope of appellate interference with orders granting or refusing interlocutory injunctions. It was held that unless the discretion exercised by the trial court is shown to be perverse, arbitrary, or capricious, appellate courts ought not to substitute their views. The following paragraphs are relevant in this connection:

"33. In the case of Anand Prasad Agarwal v. Tarkeshwar Prasad, (2001) 5 SCC 568, it was held by this Court that it would not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction.

34. The burden is on the plaintiff, by evidence aliunde by affidavit or otherwise, to prove that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition precedent for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that noninterference by the court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the

[21] 2024 SCC OnLine SC 3538

injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit. (See: Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719.)"

VI. ANALYSIS

20. At the outset, we note that the present proceedings arise from an order passed by the High Court affirming the decision of the Commercial Court, which had rejected the appellants' application for interim injunction. The main suit, being Civil Suit No. 3 of 2020 instituted by the appellants before the Commercial Court is still pending adjudication.

21. During the pendency of the suit, the appellants filed an application under Order XXXIX Rules 1 and 2 CPC seeking an interim injunction to restrain the respondent from manufacturing, selling, offering for sale, advertising, or otherwise dealing in whiskey under the trademark 'LONDON PRIDE', or any packaging or label bearing a trademark that is identical or deceptively similar to the appellants' registered trademarks viz., 'IMPERIAL BLUE', 'BLENDERS PRIDE', or 'SEAGRAM'S', alleging infringement and passing off.

22. Upon a comparison of the rival marks, the Commercial Court found that the only common element was the word 'PRIDE', and that no other similarity

was discernible. The packaging, style, bottle shape, and logos of the two brands were found to be entirely different. The Court also examined whether a consumer of the appellants' product 'BLENDERS PRIDE' would likely be deceived by the respondent's product 'LONDON PRIDE', and concluded that 'PRIDE' is a commonly used word in ordinary parlance, over which no exclusivity could be claimed. The bottles of the respective products were found to be clearly distinguishable. Since the appellants had not claimed a shape trademark, and the bottles generally adhered to standrad forms, no similarity could be drawn in that regard. The appellants' bottle bore the embossing 'SEAGRAM QUALITY', and the labels of the competing products carried distinct names and logos. No imitation capable of misleading consumers was found in the respondent's product. Moreover, the bottle produced by the appellants during the hearing did not bear any such embossed mark. Accoridngly, the Court held that the appellants had failed to establish a *prima facie* case, and that the balance of convenience did not favour them. Dismissing the application for interim injunction, the Court held that the mere use of the word 'PRIDE' by the respondent could not amount to imitation of the appellants' trademarks. Aggrieved by the said order, the appellants preferred an appeal before the High Court.

23. The High Court, upon consideration of the material on record, concurred with the findings of the Commercial Court and held that the respondent's use of the word 'PRIDE' was unlikely to mislead or confuse a consumer of average intelligence. Products such as those in question are generally identified and

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

24. The High Court further observed that the competing trademarks related to 'premium' or 'ultra-premium' whiskey, and that consumers of such products can reasonably be presumed to be literate and possess sufficient intelligence to distinguish between 'BLENDERS PRIDE/IMPERIAL BLUE' and 'LONDON PRIDE'. Even consumers of average intelligence with imperfect recollection would be able to differentiate between the rival brands. The High Court affirmed the Commercial Court's finding that there was no deceptive similarity in the respondent's mark that could constitute imitation of the appellants' trademarks.

The High Court found no infirmity in the conclusions drawn by the Commercial Court and dismissed the appeal. It directed the Commercial Court to proceed with the trial of the suit on merits and to dispose it of expeditiously – preferably within nine months of receipt of the certified copy of the High Court's order – without being influenced by any observations made in the course of interlocutory proceedings. Aggrieved thereby, the appellants have preferred the present appeal before this Court.

25. The principal contention advanced by the learned Senior Counsel for the appellants is that the appellants' registered trademarks ought to have been compared with the respondent's mark in their entirety, rather than by isolating individual components to assess visual, phonetic, or structural similarity. However, the Commercial Court erroneously dissected the word 'PRIDE' from the appellants' registered trademark 'BLENDERS PRIDE', and based its comprison primarily on that isolated element. Such dissection is impermissible under Section 28(1) of the Trade Marks Act, 1999. According to the learned Senior Counsel, these settled principles are equally applicable at the interlocutory stage while adjudicating an application for interim relief.

25.1. It is further contended that the comparison should have been conducted from the standpoint of an average consumer with imperfect recollection. A holistic comparison of the products reveals that essential features – such as the bottle shape, label structure, and the distinctive colour combination of dark blue, light blue, and gold – are deceptively similar and likely to cause confusion.

However, the Commercial Court erroneously presumed that purchasers of premium and ultra-premium whisky are discerning and unlikely to be misled.

25.2. It is also submitted that the respondent has dishonestly adopted the essential and distinctive elements of the appellants' registered trademarks. Such conduct amounts to an actionable tort and warrants the grant of an interim injunction, even in the absence of further proof of passing off.

26. On the other hand, the respondent contends that there is no similarity between the competing marks that could mislead or confuse a consumer. Both parties sell their products in boxed packaging, and a comparison of the respective boxes reveals no resemblance likely to mislead an ordinary purchaser. The colour scheme, typography, headings, logos, and other features are entirely distinct and dissimilar. Not only are the essential features different, but the overall visual impression conveyed by the products is also substantially dissimilar. Moreover, the respondent asserts that no exclusive proprietary right can be claimed over the word 'PRIDE' which is a common, laudatory term found in every dictionary and widely used in ordinary parlance.

27. As we have seen above, the law is no longer *res integra*. At this stage, a comparative visual analysis of the competing trademarks is warranted to determine whether the respondent's mark bears any deceptive similarity to the appellants' registered trademarks, so as to mislead or confuse an average consumer, by juxtaposing the facts with the settled legal position. The competing marks are:



COMPETING TRADE MARKS, GET UP AND TRADE DRESS		
	BLENDERS PRIDE	**LONDON PRIDE**
TM Reg. No. 623365 dated 25.03.1994 in Class 33 for "Wines, Spirits and Liqueurs"	(IMFL) 	(IMFL) 
TM Reg. No. 3296387 dated 28.06.2016		
TM Reg. No. 3327621 dated 03.08.2016	 	



28. In support of their claim, the appellants in their affidavit, highlighted the following overall similarities between their three registered trademarks and the respondent's mark:

(i)The shape of the bottles is identical.

(ii)The shape of the "dome structure" used in the label on the box and bottle is identical.

(iii)The color combination used on the label and packaging includes dark blue, light blue, golden and white.

(iv)The names of the brands (IMPERIAL BLUE v LONDON PRIDE) in both cases, are written in white against a dark blue background, within an identically shaped dome.

(v)The trademark name is written in white lettering below the emblem, with "BLUE" centered below "IMPERIAL" and "PRIDE" centered below "LONDON."

(vi)The outer packaging features thick golden borders, and the inside of the packaging is dark blue.

(vii)The top-middle section of the label contains an emblem—Seagram's Crest Device in gold for Imperial Blue and a lion's face device in gold for London Pride.

28.1. In particular, with respect to the label and logo, the appellants allege the following deceptive similarities:

(i)The color combination of dark blue, light blue, and gold is used in both labels and packaging.

(ii)The textual content on both logos is rendered in white.

(iii)The outer packaging in both cases features thick golden borders with a dark blue background.

29. Before delving further, it is important to note that a passing off action is a common law remedy designed to protect the goodwill and reputation of a trader against misrepresentation by another, which causes or is likely to cause confusion among consumers. As observed by *James L.J, in* ***Singer Manufacturing Co v.***

loog,[22] *"no man is entitled to represent his goods as being the goods of another man*". A passing off action applies to both registered and unregistered marks, and is rooted in the principle that one trader should not unfairly benefit from the reputation built by another. In contrast, an action for trademark infringement is a statutory remedy under the Trade Marks Act, 1999 available only in relation to registered trademarks. It is intended to safeguard the exclusive proprietary rights that registration confers.

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

29.2. While an intent to deceive is not a necessary element in either action, passing off requires proof of a likelihood of confusion or deception. It is well settled that actual deception or damage need not be proved – the test is whether

[22] 1880 18 Ch.D. 395, p.412

confusion is probable in the mind of the average consumer due to the similarity in the marks or the overall get-up of the goods.

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

29.4. Additionally, in an infringement suit, it is not necessary for the plaintiff to establish use of the mark; even a registered proprietor who has not commenced use can sue for infringement. However, in a passing off action, the plaintiff must demonstrate prior and continuous use, and that the mark has acquired distinctiveness in the minds of the public.

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

APPLICABILITY OF LEGAL PRINCIPLES

30. We shall now proceed to apply the legal principles governing trademark infringement and passing off to the facts of the present case, in order to determine whether the respondent's mark is deceptively similar to the appellants' registered trademarks.

(A) SIMILARITY AND DISTINCTIVENESS: NAME, COLOUR SCHEME, AND TRADE DRESS

31. Trademark protection – whether based on name, colour combination, trade dress, or structural features – centres on a mark's ability to distinguish the commercial origin of goods or services in the minds of consumers. The likelihood of confusion remains the cornerstone of both infringement and passing off actions.

31.1. A registered trademark is infringed when a person, in the course of trade, uses a mark that is identical or deceptively similar to a registered trademark in relation to similar goods or services. Section 2(1)(h) of the Trade Marks Act, 1999 defines 'deceptively similar' to mean 'a mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion'.

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

31.3. As held in ***Parker – Knoll Ltd v. Knoll International Ltd.***[23], proof of an intention to deceive is not required; a likelihood of confusion is sufficient to establish infringement or passing off. The evaluation must be made from the standpoint of an average consumer with imperfect recollection, emphasizing the overall commercial impression rather than engaging in a minute or mechanical comparison.

31.4. The strength of a trademark lies in its inherent distinctiveness or the distinctiveness acquired through use. Invented or coined marks – such as *Kodak* or *Solio* – are inherently distinctive and command the highest degree of protection. These marks immediately signify the commercial origin of the goods or services. In contrast, descriptive marks – such as *Air India, Mother Dairy, HMT, Windows, Doordarshan, LIC, and SBI* – are not inherently distinctive and must acquire secondary meaning in the minds of the public to qualify for

[23] 1962 RPC 265

protection. That is, the public must come to associate the mark with a particular source. Similarly, geographical terms like *Simla* or *Liverpool,* or generic trade terms, are generally not registrable unless they have acquired distinctiveness through long and exclusive use. The more distinctive a mark – whether inherently or through acquired reputation – the stronger its position in infringement or passing off actions.

31.5. In the case of composite marks – those contained multiple elements, such as words and logos – the overall impression created by the mark is relevant. However, proprietors cannot claim exclusive rights over individual components, particularly, non-distinctive or descriptive elements. Courts have often required disclaimers of such generic parts at the time of registration. For instance, in ***Tungabhadra Industries Ltd v. Registrar of Trade Marks***[24], the registration of "Diamond T" in a diamond-shaped logo was granted, but the word "Diamond" was required to be disclaimed due to its non-distinctiveness.

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

[24] AIR 1959 SC 989

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

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

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

passing off, particularly where visual cues trigger brand association and market confusion.

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

(B) RULE OF ANTI-DISSECTION

32. A foundational principle in trademark law is that marks must be compared as a whole, and not by dissecting them into individual components. This is known as the anti-dissection rule, which reflects the real-world manner in which

consumers perceive trademarks – based on their overall impression, encompassing appearance, sound, structure, and commercial impression. In ***Kaviraj Pandit Durga Dutt Sharma v. Navratna Pharmaceuticals Laboratories*** (supra), this Court underscored that the correct test for trademark infringement is whether, when considered in its entirety, the defendant's mark is deceptively similar to the plaintiff's registered mark. The Court expressly cautioned against isolating individual parts of a composite mark, as such an approach disregard how consumers actually experience and recall trademarks.

32.1. While Section 17 of the Trade Marks Act, 1999 restricts exclusive rights to the trademark as a whole and does not confer protection over individual, non-distinctive components *per se*, courts may still identify dominant or essential features within a composite mark to assess the likelihood of confusion. However, this does not permit treating such features in isolation; rather, they must be evaluated in the context of the overall commercial impression created by the mark.

32.2. This approach finds further support in the observations of scholars such as *McCarthy* in *Trademarks and Unfair Competition*, who note that consumers seldom engage in detailed, analytical comparisons of competing marks. Purchasing decisions are instead based on imperfect recollection and the general

impression created by a mark's sight, sound, and structure. The anti-dissection rule thus aligns the legal test for infringement with the actual behaviour and perception of consumers in the marketplace.

32.3. Consequently, in disputes involving composite marks, the mere presence of a shared or generic word in both marks does not, by itself, justify a finding of deceptive similarity. Courts must undertake a holistic comparison examining visual, phonetic, structural, and conceptual elements, to assess whether the overall impression created by the rival marks is likely to mislead an average consumer of ordinary intelligence and imperfect memory. If the marks, viewed in totality, convey distinct identities, the use of a common element – particularly if it is descriptive or laudatory – will not by itself amount to infringement.

32.4. In the present case, the appellants' attempt to isolate the word 'PRIDE' as the basis of comparison is legally untenable. Trademark similarity must be assessed by considering the mark as a whole, and not by extracting a single component for comparison. When viewed in their entirety, the appellants' marks – 'BLENDERS PRIDE', 'IMPERIAL BLUE', and 'SEAGRAM'S' – are structurally, phonetically, and visually distinct from the respondent's mark 'LONDON PRIDE'. The mere presence of the common word 'PRIDE' which is a generic and laudatory term, does not render the competing marks deceptively

similar in the absence of an overall resemblance. Thus, under the anti-dissection rule, no case for infringement or passing off is made out.

(C) DOMINANT FEATURE TEST

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

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

similarity likely to mislead an average consumer of ordinary intelligence and imperfect recollection.

33.2. An analogy that aptly illustrates the significance of a dominant element in a composite mark is that of mixing milk and water. If a small quantity of milk is added to a half-glass of water, the mixture becomes cloudy – the change is perceptible, but the dominant character remains watery. Conversely, if the same amount of water is added to a half-glass of milk, the result still appears to be milk – the dilution is imperceptible. Though the components are the same, the perceptual impact differs, depending on which element dominates. Similarly, in trademark analysis, the presence of common elements across marks does not automatically indicate a likelihood of confusion. What matters is the relative prominence and distinctiveness of the elements. Just as the milk in the second example visually and qualitatively overwhelms the water, a dominant feature in a mark can subsume other components and shape consumer perception. Therefore, while assessing deceptive similarity, due weight must be given to the dominant element, without disregarding the composite nature of the mark.

33.3. The dominant feature of a mark is typically identified based on factors such as its visual and phonetic prominence, placement within the mark (with initial components often carrying greater perceptual weight), inherent distinctiveness,

and the degree of consumer association it has generated. The dominant element functions as the "hook" that captures the consumer's attention and facilitates brand recall. For instance, in composite marks such as 'BLENDERS PRIDE' or 'IMPERIAL BLUE', the terms 'BLENDERS' and 'IMPERIAL' may be regarded as dominant, owing to their distinctive and less frequently used character. In contrast, elements such as 'PRIDE' or 'BLUE' are relatively generic, descriptive, or commonplace in the liquor industry, as evidenced by other marks like *ROCKFORD PRIDE, ROYAL PRIDE,* or *OAK PRIDE*. Such shared or non-distinctive terms cannot be monopolized, unless it is established that they have acquired secondary meaning through extensive and exclusive use, and are uniquely associated with the plaintiff's goods in the minds of the public.

33.4. In the present case, the appellants contend that the respondent's use of the mark 'LONDON PRIDE' infringes their marks 'BLENDERS PRIDE' and 'IMPERIAL BLUE'. However, upon a holistic comparison, the overall commercial impression of 'LONDON PRIDE' is substantially different from either of the appellants' marks. The trade dress, label design, colour scheme, typography, and brand presentation are all distinctive and unrelated. Moreover, the term 'LONDON' introduces a geographical identifier that conveys a distinct brand identity, divergent from 'BLENDERS' or 'IMPERIAL'. The respondent's mark, therefore, does not imitate the dominant features of the appellants' marks.

As such, there exists no real likelihood of confusion or false association in the mind of an average consumer exercising ordinary caution and imperfect recollection.

(D) NO EXCLUSIVE RIGHT OVER COMMON OR DESCRIPTIVE TERMS

34. It is a well-established principle of trademark law that generic, descriptive, or laudatory terms – particularly those commonly used in a given trade – cannot be monopolized by any one proprietor. Even where such terms form part of a registered trademark, protection does not extend to those elements *per se* unless it is affirmatively shown that they have acquired secondary meaning – i.e., that the term has come to be exclusively and distinctively associated with the plaintiff's goods in the perception of the consuming public.

34.1. In ***Godfrey Philips India Ltd v. Girnar Food & Beverages Pvt. Ltd.***[25], this Court unequivocally held that descriptive words denoting the character or quality of goods are not capable of exclusive appropriation, except where they have acquired distinctiveness through prolonged, continuous, and exclusive use.

34.2. The word 'PRIDE' is a laudatory and commonly used English term, typically employed to suggest notions of excellence, heritage, or national identity.

[25] (2004) 5 SCC 257

Within the alcoholic beverages industry, it is extensively used as part of various trademarks. Judicial notice may be taken of multiple registrations under Class 33 – such as McDowell's Pride, Highland Pride, Royal Pride, and Pride of India – all incorporating the term 'PRIDE'. This widespread usage illustrates that the word is *publici juris*, not inherently distinctive, and therefore incapable of exclusive appropriation in the absence of compelling evidence of secondary meaning.

34.3. The appellants' mark 'BLENDERS PRIDE' is a composite trademark, comprising the suggestive term 'BLENDERS' – alluding to the craft of blending spirits – and the laudatory word 'PRIDE'. By contrast, the respondent's mark 'LONDON PRIDE', couples a geographical term with the same non-distinctive word 'PRIDE'. The mere presence of a shared generic or descriptive element is insufficient, by itself, to support a claim of deceptive similarity.

34.4. In ***Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd***. (supra), this Court reaffirmed that deceptive similarity must be assessed holistically, taking into account factors such as the nature of the marks, the class of purchasers, mode of purchase, and the overall circumstances surrounding the trade.

34.5. In the present case, the appellants have failed to produce cogent evidence – such as consumer surveys, brand recognition studies, or consistent third-party

references – to demonstrate that the term 'PRIDE' has acquired secondary meaning exclusively pointing to their product. Mere duration of use, turnover, or marketing expenditure is insufficient to displace the term's inherent descriptive or laudatory character. As judicial precedent makes clear, even extensive use of a descriptive term does not justify exclusivity unless such use has displaced the word's primary meaning, so that it now serves as a source identifier in the minds of the consuming public.

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

(E) AVERAGE CONSUMER TEST AND IMPERFECT RECOLLECTION

35. The average consumer test is a central standard in trademark and unfair competition law. It assesses whether there exists a likelihood of confusion between two marks, or whether a mark lacks distinctiveness or is merely descriptive. The test is grounded in the perception of the average consumer – a

person who is reasonably well-informed, observant, and circumspect, but not an expert or overly analytical. As held by the European Court of Justice in ***Lloyd Schuhfabrik Meyer v. Klijsen Handel BV***[26], the average consumer forms an overall impression of a mark rather than dissecting it into individual components.

35.1. A key feature of this test is the recognition that consumers rarely recall trademarks with perfect accuracy. For example, this Court in ***Amritdhara Pharmacy v. Satyadeo Gupta*** (supra) emphasized that the comparison must be made from the perspective of a person of average intelligence and imperfect recollection. Thus, minor phonetic or visual similarities may cause confusion if the marks share prominent or memorable features. The test also considers that the degree of consumer attentiveness may vary depending on the nature of the goods: greater care may be exercised when purchasing luxury items than in the case of everyday consumer goods.

35.2. The test is equally relevant to both inherent and acquired distinctiveness. A mark has inherent distinctiveness if, by its very form and appearance, it identifies trade origin to the average consumer at the time of registration. A mark may acquire distinctiveness if, through consistent and prolonged use, it becomes associated by a significant portion of the relevant public with a particular

[26] Case C-342/97; [2000] F.S.R. 77, ECJ

commercial source – even if the consumer cannot name the source precisely. What matters is not that the consumer knows the producer, but that the mark serves as an indicator of origin.

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

35.4. The doctrine of imperfect recollection, closely linked to the average consumer test, emphasizes the importance of first impression. Courts have cautioned against overly technical or granular comparisons of trademarks [See: ***James Crossley Eno v. William George Dunn***[27] ***and Aristoc Ltd v. Rysta Ltd,***[28]]. Instead, they have favoured realistic assessments that account for hazy memory, indistinct pronunciation, and fleeting visual impressions. Notably, invented or fanciful words are generally more difficult to recall than common or descriptive

[27] H.L. (E) 1890, June 19. Vol. XV, App. Cas. page 252
[28] 1945 AC 68 (House of Lords)

ones, and distinctive features are more likely to be retained in the consumer's memory.

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

> *"You must take the two words. You must judge of them, both by their look and by their sound. You must consider the goods to which they are applied, the nature and kind of customer who would be likely to buy the goods, and all the surrounding circumstances. You must further consider what is likely to happen if each of these trademarks is used in a normal way for the respective goods. If, considering all these circumstances, you come to the conclusion that there will be confusion – not necessarily that one trader will be passed off as another – but that there will be confusion in the mind of the public leading to confusion in the goods, then registration must be refused."*

35.6. This multifactorial framework complements the modern average consumer test, ensuring that the analysis of deceptive similarity remains practical and context-sensitive. It focuses on the overall commercial impression left by the marks, rather than conducting a mechanical or analytical breakdown. Indian courts have consistently adopted this approach in determining the likelihood of confusion in both infringement and passing off actions.

---

[29] (1906) 23 RPC 774 at p. 777

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

(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.

[30] (1975) AC 396

(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.

37. Earlier, the appellants were unsuccessful in asserting a similar claim regarding the use of the word 'Pride'. In ***Pernod Ricard India (P) Ltd. v. United Spirits Ltd.***[31] the appeal arose from the dismissal of an application under Order XXXIX Rules 1 and 2 CPC, wherein the appellant, Pernod Richard India Private Ltd, had sought an interim injunction restraining United Spirits Ltd from using the mark "Royal Challenge American Pride". By order dated 17.01.2022, the commercial court rejected the appellant's plea. The Punjab and Haryana High Court vide its judgment dated 21.03.2023 upheld the commercial court's decision and dismissed the appeal. The court held that the appellant had no independent registration over the word 'pride', but only over the composite mark 'Blenders Pride'. Consequently, no exclusive or enforceable rights could be claimed in respect of the standalone word 'Pride'. Further, the Court observed that since the appellant had failed to raise any objection at the stage of registration of the rival mark before the Registrar of Trade Marks, it was estopped from doing so at a later stage. The following paragraphs from the High Court's decision are pertinent in this regard:

---

[31] 2023 SCC OnLine P&H 477 : (2023) 3 RCR (Civil) 162

"24. *Learned counsel for the respondent has summarised his arguments on the following issues:*

24.3.Estoppel

The admissions made by the appellant-plaintiff before the Registry, especially when the appellant is claiming a right at the time of registration is important and will debar the appellant-plaintiff from any relief and if not disclosed in the plaint, amounts to material concealment. The reply of the plaintiff at the time of registration of its mark, in response to the objection raised by the Registrar, in which the plaintiff gave up any right over the word "Pride" and rather claimed right over "BLENDER'S" is an important factor. The relevant portion of plaintiff's reply in respect of their own admission and claim is reproduced below:

"We submit that the subject mark is a unique combination of word BLENDER'S and PRIDE which in combination or in isolation have no reference whatsoever with the goods for which registration is sought by the applicants."

"...We further submit that it is a well-settled principle that the marks have to be compared in entirety and should not be dissected into separate components for the sake of comparison."

Further plaintiff in respect to different marks containing PRIDE inter alia gave the following reply:

"Mcdowell's Pride

When compared as a whole, the cited mark Mcdowell's pride is phonetically, visually as well structurally dissimilar and distinguishable from the subject mark."

34. *Accordingly, considering the matter from the factual as well as legal aspect and by applying the ratio of judgments and taking into consideration the provisions of law and applicable to the facts of the present appeal, the bone of contention revolves around primarily the two trade marks i.e. "Blenders Pride" on one hand owned by the appellant and "Royal Challenge American Pride", a* ***trade mark duly registered by the respondents on the other hand are on loggerheads****. In the light of the express provisions whereby the trade mark or a part of trade mark has been infringed, it is a requirement of law as per Sections 15 and 17 of the Act that the part of the trade mark has to be registered separately and admittedly in the present case, the appellant is holder of the registered trade mark titled "Blenders Pride" collectively, and, therefore, the entire thrust of the argument and the case built up by the appellant that there is infringement by the respondents is only on the basis of a common word "Pride".* ***At the outset, in the absence of any registration of the word "Pride" independently and separately, disentitles the appellant to any stay qua the same. Further the act and conduct of the appellant also demonstrates that they themselves have foregone their right and have never objected to the use of the word "Pride" separately.*** *Reliance has been placed on multiple litigations especially the one before the Delhi High Court passed in Reddys Laboratories Ltd. v. Controller, Trade Marks [Reddys*

Laboratories Ltd. v. Controller, Trade Marks, 2022 SCC OnLine Del 813] , which the appellant consented and did not raise any objection.

***39**. it is too far stretch at the behest of the appellant that by use of word "Pride", there could be any misconception or dilution in the mind of the common man on the street, who is the ultimate consumer, which would lead to any confusion. The said parameter having not been met, the appellant ahs failed to demonstrate as to how he is facing any irreparable loss or injury which could not be compensated in terms of money and as to how the balance of convenience lies in its favour. Both the companies are well reputed and well established in their field and are rather competitors. The similarities of the single word cannot be taken as an infringement and/or passing off and, hence, we do not find any merit in the present appeal and in fact, any interim relief granted to the appellant will adversely affect the open market and might lead to monopolistic trade activity by the appellant.*

***40.** Accordingly, the present appeal stands dismissed."*

37.1. The appellant thereafter challenged the decision of the High Court by filing Special Leave Petition (C) No. 17674/2023 before this Court. The SLP was dismissed by order dated 06.09.2023, wherein, the Court declined to interfere, observing as follows:

"After hearing learned counsel for the parties at length, the impugned orders being concurrent which is for the purposes of determination of interim arrangement pending suit cannot in any manner influence the final determination of the suit, we would not like to interfere under Article 136 of the Constitution of India.

However, we find that the suit is at an initial stage for almost 3 years and in a suit of this nature even issues have not been framed. On our query, learned counsel for the petitioner submits that there are only two witnesses to be examined and so is the position with the respondent.

The aforesaid being the position, we are of the view that from the stage of framing of issues to such a trial and arguments, it should not take more than six months to complete the trial proceedings. We order accordingly.

The concerned District Judge, Mohali to proceed with the suit accordingly.

At the insistence of counsel for the petitioner, we clarify that it is well settled proposition of law that decisions on interlocutory applications are only made to protect rival interests pending suit. Somehow the interim applications itself are treated as final decision but it is not so. In all such cases, interim arrangements should be made and the trial should proceed rather than to spend time only on interlocutory applications. That protects the petitioner against the apprehension

that the impugned judgment may be cited in other Court qua petitioner's cases of a similar nature.
Needless to say that the trial Court will not be influenced at the stage of final decision based on evidence recorded with the observations at the interlocutory stage whether of the trial Court or the High Court.
The special leave petition is dismissed."

38. In ***Bajaj Auto Ltd v. TVS Motor Co. Ltd***[32]**,** this Court expressed grave concern over the inordinate delays in the adjudication of intellectual property disputes in India. It observed that litigation in matters involving copyright, trademarks, and patents is often prolonged, with the real contest revolving around interim injunctions, while final adjudication remains elusive for years. Terming this as an unsatisfactory state of affairs, the Court emphasized the need for time-bound disposal of such cases. It accordingly, directed that final judgment in IP matters should ordinarily be delivered within four months of filing the suit, with hearings conducted on a day to-day basis. The following paragraphs are pertinent in this context:

"3. It is evident that the suit is still pending before the learned Single Judge of the Madras High Court. We are unhappy that the matter has been pending in the High Court at the interlocutory stage for such a long time as the suit was filed in December 2007 and yet even written statement has not been filed.

4. Recently, we have held in Shree Vardhman Rice & General Mills v. Amar Singh Chawalwala [(2009) 10 SCC 257] as follows:

"... Without going into the merits of the controversy, we are of the opinion that the matters relating to trade marks, copyrights and patents should be finally decided very expeditiously by the trial court instead of merely granting or refusing to grant injunction. Experience shows that in the matters of trade marks, copyrights and patents, litigation is mainly fought between the parties about the

[32] (2009) 9 SCC 797

temporary injunction and that goes on for years and years and the result is that the suit is hardly decided finally. This is not proper.

Proviso (a) to Order 17 Rule 1(2) CPC states that when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the court finds that, for exceptional reasons to be recorded by it the adjournment of the hearing beyond the following day is necessary. The court should also observe clauses (b) to (e) of the said proviso.

In our opinion, in matters relating to trade marks, copyright and patents the proviso to Order 17 Rule 1(2) CPC should be strictly complied with by all the courts, and the hearing of the suit in such matters should proceed on day-to-day basis and the final judgment should be given normally within four months from the date of the filing of the suit."

As has been observed by us in the aforesaid case, experience has shown that in our country, suits relating to the matters of patents, trade marks and copyrights are pending for years and years and litigation is mainly fought between the parties about the temporary injunction. This is a very unsatisfactory state of affairs, and hence we had passed the abovequoted order in the abovementioned case to serve the ends of justice. We direct that the directions in the aforesaid order be carried out by all courts and tribunals in this country punctually and faithfully.

5. In the present case, although arguments were advanced at some length by the learned counsel for both the parties, we are of the opinion that instead of deciding the case at the interlocutory stage, the suit itself should be disposed of finally at a very early date. Hence, without going into the merits of the controversy, we direct the respondent-defendant to file written statement in the suit, if not already filed, on or before the last date for closing of the Madras High Court for Dussehra holidays. We would request the learned Single Judge who is trying the suit to commence the hearing of the suit on the reopening of the Madras High Court after Dussehra holidays and then carry it on a day-to-day basis. No adjournment whatsoever ordinarily will be granted and the suit shall be finally disposed of on or before 30-11-2009."

39. We have carefully examined the judicial precedents both in support of and against the grant of interim injunctions in actions for trademark infringement and passing off. These authorities also delineate the limited scope of appellate

interference with the discretionary findings of the trial Court on such applications. We are in respectful agreement with the principles enunciated in the aforementioned decisions. Applying these settled principles to the facts of the present case, we are of the considered view that the rival marks, when assessed in their entirety, do not exhibit such visual, phonetic, or structural similarity as would give rise to a real and tangible likelihood of confusion in the mind of an average consumer possessing imperfect recollection. The overall trade dress, distinctive components, and market presentation of the respondent's product serve to sufficiently distinguish it from that of the appellants. Accordingly, the allegation of deceptive similarity is not borne out on a *prima facie* assessment, and no case is made out warranting the grant of interim relief.

VIII. RECENT EVOLUTION OF TRADEMARK JURISPRUDENCE IN THE UK – THE POST-SALE CONFUSION DOCTRINE

40. The recent decision of the Supreme Court of the United Kingdom in ***Iconix Luxembourg Holdings SARL (Respondent) v Dream Pairs Europe Inc and another (Appellants)*** [33] marks a significant development in trademark jurisprudence, particularly concerning the principle of post-sale confusion. The judgment not only reaffirms the established principles governing similarity of

[33] [2025] UKSC 25

marks and likelihood of confusion, but also reinforces the appellate standard of review regarding findings of fact by a trial Court.

Scope of appellate review

40.1. While rejecting the appellants' contentions, the Supreme Court restored the findings of the High Court (trial Court), emphatically reaffirming the well settled legal principle that an appellate court cannot substitute its own findings merely because it may have arrived at a different conclusion. Unless there exists an error apparent on the face of the record or the trial court has committed a fundamental jurisdictional error going to the root of the matter, appellate interference is unwarranted.

Post-sale confusion: A Developing Doctrine

40.2. The notion of post-sale confusion – though well recognized in jurisdictions like the United States and now the UK – is still relatively novel within Indian trademark law. It refers to the confusion that occurs not at the point of purchase, but rather after the product has been bought and is seen in use by others. This form of confusion can arise, for example, when a consumer knowingly purchases counterfeit goods – such as imitation *Rolex watches* or knockoff *Adidas* or *Nike* apparel – or when automobiles are inspired from more premium offerings. In such cases, while the purchaser may not be deceived, the public at large may be misled

into associating the infringing goods with the original brand, thereby diluting the brand's reputation and goodwill.

40.3. The underlying harm in post-sale confusion lies in the deceptive appearance of legitimacy, which can impair the distinctiveness and perceived exclusivity of the genuine product. This is especially relevant in sectors like fashion, luxury goods, automobiles, and food items, where brand visibility and public perception are essential aspects of consumer engagement and brand equity.

40.4. However, in the present case, the goods in question are not intended for public display and are for private consumption. Therefore, the doctrine of post-sale confusion, while significant, is not directly applicable to the facts of this particular matter. The issue remains ripe for more comprehensive analysis in a future case where such considerations may come up for consideration.

40.5. Even though the doctrine of post-sale confusion is inapplicable to the facts of the present case, certain paragraphs from the judgment of the UK Supreme Court remain relevant, particularly, insofar as they clarify the broader principles governing similarity of marks, likelihood of confusion, and the limits of appellate interference with trial court findings.

40.6. For better appreciation, the relevant portions of the judgment are extracted below:

> *"(b)The functions of a trade mark and the right of an owner of a registered trade mark:*
>
> *16. In L'Oréal SA v Bellure NV (C-487/07) [2010] Bus LR 303, para 58, the CJEU gave a non-exhaustive list of the various functions of a registered trade mark, referring to "not only the essential function…but also its other functions, in particular that of guaranteeing the quality of the goods or services in question and those of communication, investment or advertising".*
>
> *17. In SkyKick UK Ltd v Sky Ltd [2024] UKSC 36; [2025] Bus LR 251, para 54, Lord Kitchin (with whom the other Justices agreed) outlined the essential function of a registered trade mark as being:*
>
> > *"… in particular, to guarantee the identity of the origin of the goods or services in relation to which it is used. In more colloquial terms, it is a badge of origin and its purpose is to permit the consumer, without any possibility of confusion, to distinguish the goods or services of one undertaking from those of another"*
>
> *(f) The average consumer*
>
> *29. The average consumer includes "any class of consumer to whom the guarantee of origin is directed and who would be likely to rely on it, for example in making a decision to buy or use the goods": London Taxi Corpn Ltd v Frazer-Nash Research Ltd [2017] EWCA Civ 1729; [2018] FSR 7 per Floyd LJ, at para 34.*
>
> *30. The characteristics of the average consumer have been considered in several cases. In Lidl Great Britain Ltd v Tesco Stores Ltd [2024] EWCA Civ 262; [2025] 1 All ER 311 Arnold LJ observed, at para 15, that discussion of the characteristics and role of the average consumer occupies the whole of Chapter 3 in Kerly's Law of Trade Marks and Trade Names, 17th ed (2023). Arnold LJ then proceeded to highlight several points for the purposes of that case, at paras 16-20. It is appropriate also for the purposes of this appeal to set out those points:*
>
> > *"16. First, the average consumer is both a legal construct and a normative benchmark. They are a legal construct in that consumers who are ill-informed or careless and consumers with specialised knowledge or who are excessively careful are excluded from consideration. They are a normative benchmark in that they provide a standard which enables the courts to strike a balance between the various competing interests*

involved, including the interests of trade mark owners, their competitors and consumers.

17. Secondly, the average consumer is neither a single hypothetical person nor some form of mathematical average, nor does assessment from the perspective of the average consumer involve a statistical test. They represent consumers who have a spectrum of attributes such as age, gender, ethnicity and social group. For this reason the European case law frequently refers to 'the relevant public' and 'average consumers' rather than, or interchangeably with, 'the average consumer': see, for example, Intel Corpn Inc v CPM United Kingdom Ltd (Case C-252/07) [2008] ECR I-8823; [2009] Bus LR 1079, para 34. It follows that assessment from the perspective of the average consumer does not involve the imposition of a single meaning rule akin to that applied in defamation law (but not malicious falsehood). Thus, when considering the issue of likelihood of confusion, a conclusion of infringement is not precluded by a finding that many consumers of whom the average consumer is representative would not be confused. To the contrary, if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, then a finding of infringement may properly be made.

18. Thirdly, assessment from the perspective of the average consumer is designed to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence. ....

...

20. Fifthly, the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind."

(g) Similarity of the sign to the trade mark

31. It is sufficient for the purposes of this appeal to state that the test for the similarity of the sign to the trade mark was set out by the CJEU in Sabel BV v Puma AG (Case C251/95) [1998] 1 CMLR 445 which, at para 23, it stated:

"That global appreciation of the visual, aural or conceptual similarity of the marks in question, must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components."

In short, in order to assess the degree of similarity between the marks concerned, the court must determine the degree of visual, aural (or phonetic) and conceptual similarity between them.

32. If the threshold of similarity is passed, then an assessment of the degree of similarity becomes relevant to the subsequent question as to whether "there exists a likelihood of confusion on the part of the public": Sabel BV v Puma AG, at para 23.

33. In Ferrero SpA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (C-552/09 P) [2011] ETMR 30 the CJEU stated, at para 66, that:

> *"It is only if there is some similarity, even faint, between the marks at issue that the General Court must carry out a global assessment in order to ascertain whether, notwithstanding the low degree of similarity between them, there is, on account of the presence of other relevant factors such as the reputation or recognition enjoyed by the earlier mark, a likelihood of confusion or a link made between those marks by the relevant public."*

The CJEU also referred to this requirement for a global assessment even if the degree of similarity was only faint, at para 60 of its judgment in European Union Intellectual Property Office v Equivalenza Manufactory SL (Case C-328/18 P) EU:C:2020:156 ("Equivalenza"). At para 60 the CJEU stated:

> *"... It is only if there is some similarity, even faint, between those signs that the General Court must carry out a global assessment in order to ascertain whether, notwithstanding the low degree of similarity between them, there is, on account of the presence of other relevant factors such as the reputation or recognition enjoyed by the earlier mark, a likelihood of confusion in the mind of the relevant public (see, to that effect, judgment of 24 March 2011, Ferrero v OHIM (C552/09 P) EU:C:2011:177; [2011] ETMR 30, paras 65 and 66 and the case-law cited)."*

In relation to the faint degree of similarity see also JW Spear & Sons Ltd v Zynga Inc [2015] EWCA Civ 290; [2016] 1 All ER 226, paras 58-60. Furthermore, in that case Floyd LJ also addressed the issue of taking forward the court's assessment of the degree of similarity to the global assessment of the likelihood of confusion. He stated at para 60(iv) that:

> *"In conducting the global appreciation test the court must take forward its assessment of the degree of similarity perceived by the average consumer between the mark and sign."*

(h) Likelihood of confusion on the part of the public

34. If the sign is at least similar to the trade mark, then the court is required to assess whether "there exists a likelihood of confusion on the part of the public".

35. The public does not (always) mean everyone but instead means the relevant public. So, in Koninklijke Philips Electronics NV v Remington Consumer Products Ltd (C299/99) [2003] Ch 159, para 63, the CJEU, citing Gut Springenheide GmbH v Oberkreisdirektor des Kreises Steinfurt─Amt für Lebensmittelüberwachung (Case C210/96) [1998] ECR I-4657, para 31, identified the relevant public as the "average consumer of the category of goods or services in question". In Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV (C-342/97) [1999] ECR I-3819; [1999] All ER (EC) 587, the CJEU again identified the relevant public in the same way. The CJEU stated, at para 25:

> *"The wording of article 5(1)(b) of the Directive – 'there exists a likelihood of confusion on the part of the public...' — shows that the perception of marks in the mind of the average consumer of the category of goods or services in question plays a decisive role in the global appreciation of the likelihood of confusion."*

36. The average consumer is only a consumer of the particular type of goods or services concerned. There is no requirement that the average consumer is an actual purchaser who buys or who has bought the specific goods or services in respect of which a potentially infringing sign is used. Where the goods are consumer goods in almost universal use in the United Kingdom, the relevant public consists of a very wide group of the members of the public. As this case concerns footwear, it was common ground that the public concerned with footwear is the UK adult population generally: see the judgment of Miles J at para 122.

37. In Canon Kabushiki Kaisha v Metro Goldwyn Mayer Inc (Case C-39/97) [1999] ETMR 1; [1998] All ER (EC) 934, para 29, the CJEU explained what amounts to a likelihood of confusion in the following terms:

> *"… the risk that the public might believe that the goods or services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, constitutes a likelihood of confusion…"*

38. In order to try to ensure consistency of decision making, a standard summary of the principles established by these authorities, expressed in terms referable to the registration context, has been adopted in this jurisdiction. The current version was set out by Arnold LJ in Match Group LLC v Muzmatch Ltd [2023] EWCA Civ 454; [2023] Bus LR 1097, para 27, as being:

> *"(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;*
> *(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well*

informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components
(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;
(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; and
(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

39. Having set out the standard summary of the principles in terms referable to the registration context, Arnold LJ went on to state, at para 28, that:

> *"The same principles are applicable when considering infringement, although it is necessary for this purpose to consider the actual use of the sign complained of in the context in which the sign has been used."*

(i) The context in which the sign has been used.

82. The same pragmatic approach to the level of attentiveness in relation to post-sale confusion was applied on appeal in the judgment of the CJEU (First

Chamber). The relevant paragraphs in the judgment are paragraphs 40–43. At para 40 the CJEU stated:

> *"40. Where it is established in fact that the objective characteristics of a given product mean that the average consumer purchases it only after a particularly careful examination, it is important in law to take into account that such a fact may reduce the likelihood of confusion between marks relating to such goods at the crucial moment when the choice between those goods and marks is made."*

94. It is perhaps obvious, and certainly an inevitable conclusion drawn from experience, that reasonable minds, and in particular reasonable judicially trained minds, each faithfully applying the relevant law and principles, will come to different conclusions about the answer to these multifactorial questions. While of course the decision of an appellate court trumps that of the court below, the law has imposed structured constraints designed to prevent a free for all in a higher court whenever a party (with the necessary resources) wishes to challenge the first instance decision of the trial judge. The reasons for these constraints are set out in a string of well-known authorities including, in the intellectual property context, Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5; [2014] FSR 29, per Lewison LJ at para 114. The reasons there set out relevantly include the following:

> *(i) The trial is not a dress rehearsal. It is the first and last night of the show.*

…

95. In Lifestyle Equities CV v Amazon UK Services Ltd [2024] UKSC 8; [2024] Bus LR 532 this court reviewed those constraints in a trade mark context. After citing from the Fage case this court in a joint judgment said, at paras 49-50:

> *"49. That does not, however, mean the appeal court is powerless to intervene where the judge has fallen into error in arriving at an evaluative decision such as whether an activity was or was not targeted at a particular territory. It may be possible to establish that the judge was plainly wrong or that there has been a significant error of principle; but the circumstances in which an effective challenge may be mounted to an evaluative decision are not limited to such cases. Many of the important authorities in this area were reviewed by the Court of Appeal in In re Sprintroom Ltd [2019] 2 BCLC 617, paras 72–76. There, in a judgment to which all members of the court (McCombe, Leggatt and Rose LJJ) contributed, the court concluded, at para 76, in terms with which we agree, that on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out the balancing exercise afresh but must ask whether the decision of the judge was wrong by reason of an identifiable flaw in the judge's treatment of the question to be decided, such as a gap*

> *in logic, a lack of consistency, or a failure to take into account some material factor, which undermines the cogency of the conclusion.*
>
> *50. On the other hand, it is equally clear that, for the decision to be 'wrong' under CPR r 52.21(3), it is not enough to show, without more, that the appellate court might have arrived at a different evaluation."*

IX. SUMMARY OF FINDINGS

41. It is a settled principle of trademark law that deceptive similarity does not necessitate exact imitation. What is material is the likelihood of confusion or association in the minds of consumers arising from an overall resemblance between the competing marks. The applicable standard is that of an average consumer with imperfect recollection.

42. While comparing rival marks, Courts must assess the marks in their entirety, rather than dissecting composite trademarks into isolated components. The dominant feature of a mark may assist in crossing the preliminary threshold of analysis, but the ultimate inquiry must focus on the overall impression created by the mark – especially in the context of the relevant goods, trade channels, and target consumers. The proper test is not to place the two marks side by side to identify dissimilarities, but to determine whether the impugned mark, when viewed independently, is likely to create an impression of association or common origin in the mind of the average consumer. Even if a particular component of a mark lacks inherent distinctiveness, its imitation may still amount to infringement

if it constitutes an essential and distinctive feature of the composite mark as a whole.

43. Section 17(1) of the Trade Marks Act, 1999 grants exclusive rights only in respect of the mark as registered. Section 17(2) excludes protection for common or non-distinctive elements unless such elements have acquired secondary meaning. Sections 27(2) and 29 preserve the right to institute passing off actions and define the contours of infringement, respectively. Notably, Section 29(3) presumes confusion only where identical marks are used for identical goods – a condition not met in the present case as the marks.

44. Applying the settled legal standards – including the anti-dissection rule, the overall similarity test, and the perspective of an average consumer – we *prima facie* find no deceptive similarity between the competing marks that would give rise to confusion.

45. In the present case, the marks – 'BLENDERS PRIDE' and 'LONDON PRIDE' – are clearly not identical. Though the products are similar, the branding, packaging, and trade dress of each are materially distinct. The Commercial Court and High Court have rightly held that the term 'PRIDE' is *publici juris*, and commonly used in the liquor industry. The dominant components –

'BLENDERS', 'IMPERIAL BLUE', and 'LONDON' – are entirely different both visually and phonetically, producing distinct overall impressions.

46. The courts below also correctly observed that the products in question are premium and ultra-premium whiskies, targeted at a discerning consumer base. Such consumers are likely to exercise greater care in their purchase decisions. The distinct trade dress and packaging reduce any likelihood of confusion. The shared use of the laudatory word 'PRIDE', in isolation, cannot form the basis for injunctive relief.

47. Though the appellants heavily rely on the anti-dissection principle, they themselves seek to dissect their composite marks and claim exclusive rights over isolated elements such as 'PRIDE' and the use of the colour blue. Their claim, in essence, appears to be based on brand association with the Seagram's or Pernod Richard portfolio, rather than any legally cognizable infringement.

48. The allegation regarding the embossing of "Seagram Quality" on the respondent's bottle was rightly rejected by the Commercial Court. The bottle produced as evidence by the appellants lacked such embossing, and this finding remains unchallenged. The appellants themselves admitted that they failed to furnish any invoice or produce a witness to support their claim, thereby rendering the allegation unreliable and lacking in *bona fides*.

49. In the liquor industry, where advertising is highly restricted, brand recognition rests predominantly on packaging and consumer loyalty. Unless the imitation is deliberate and intended to mislead, the chance of confusion is minimal. The allegation of counterfeiting in the present case appears to be speculative and unsupported by credible evidence.

50. The appellants' attempt to combine elements from two distinct marks – 'BLENDERS PRIDE' and 'IMPERIAL BLUE' – to challenge the respondent's mark 'LONDON PRIDE', constitutes a hybrid and untenable pleading. Each mark must be assessed independently, and cherry-picking generic or unregistered features from multiple marks to fabricate a composite case of infringement is not legally sustainable.

51. It is not in dispute that the word "PRIDE" is not registered as a standalone mark. Nor can the appellants claim exclusivity over common elements like bottle shape or color schemes that are generic and widely used in the industry. While the composite marks 'BLENDERS PRIDE' and 'IMPERIAL BLUE' are protected, their individual elements – lacking distinctiveness – are not independently enforceable.

52. The piece-meal approach adopted by the appellants – seeking to combine unrelated features from their own marks – has undermined their claim. Apart from

the shared use of a common term, there is no meaningful similarity between the marks. Key elements such as packaging, typography, bottle design, and label layout are materially distinct. In a market segment, where consumers are more discerning, the likelihood of confusion is negligible.

53. The appellants' contention that the Commercial Court dissected the marks mechanically is belied by the High Court's holistic analysis. The High Court correctly noted that 'BLENDERS PRIDE' uses a round bottle, whereas 'LONDON PRIDE' adopts a cylindrical form. The labels, cartons, and design motifs are entirely different. These variations eliminate the possibility of confusion.

54. The comparison between 'IMPERIAL BLUE' and 'LONDON PRIDE' reveals even greater divergence. The marks differ in word arrangement, label structure, and packaging. No similarity exists – visual, phonetic, or structural – that can support a claim for infringement or passing off. Since resemblance is a *sine qua non* for both causes of action, the appellants' claim must fail.

55. Although the appellants hold registrations for the composite marks, no evidence was adduced to demonstrate that any particular element – such as bottle shape, color scheme, or the word "PRIDE" – had acquired distinctiveness or secondary meaning. Trademark protection extends only to distinctive identifiers.

Descriptive or commonplace elements fall outside the ambit of protection unless distinctiveness is proved.

56. Significantly, the appellants' earlier challenge to United Spirits' use of the term 'PRIDE' in the mark "*Royal Challenger American Pride"* was unsuccessful. The Punjab and Haryana High Court held that the appellants did not possess an independent registration for the word 'Pride', but only for the composite mark 'Blenders Pride'. Accordingly, they could not claim any exclusive or enforceable rights over the standalone word 'Pride'. The Court further observed that having failed to object to the registration of the impugned mark before the Trade Marks Registry, the appellants were estopped from asserting such rights subsequently. This decision was upheld by this Court in SLP (C) No. 17674/2023 dismissed on 06.09.2023. Therefore, the appellants' present attempt is contrary to law and settled principles of equity.

57. In view of the foregoing analysis, we find no ground to interfere with the concurrent findings of the Commercial Court and the High Court. The appellants have failed to establish a *prima facie* case of deceptive similarity that could justify the grant of interim injunction.

X. CONCLUSION

58. In fine, the appeal fails and is dismissed. The Commercial Court is directed to proceed with the trial and dispose of the suit on merits, in accordance with law, uninfluenced by any observations made by this court or by the courts below, within a period of four months from the date of receipt of a copy of this judgment. It is clarified that the present judgment is confined to the adjudication of the application for interim injunction, based solely on the materials available at this interlocutory stage. There shall be no order as to costs.

59. All pending application(s), if any, stand closed.

.....J
[J.B. Pardiwala]

.....J
[R. Mahadevan]

NEW DELHI
AUGUST 14, 2025.