

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**OMP No.885 of 2024 in
COMS No.18 of 2024**

Reserved on: 08.10.2025

Date of Decision: 11.11.2025

Zydus Wellness Products Ltd.Plaintiff

Versus

Leeford Healthcare Ltd. ... Defendant

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹ Yes

For the Plaintiff: Mr. Guru Natraj, Ms. Shradha Karol and Mr. Vaibhav Singh Chauhan Advocates.

For the Defendant: Mr. Neeraj K. Grover, Advocate (through V.C) and Mr. Yash Sharma, Advocate.

Sandeep Sharma, Judge

Instant application under Order XXXIX Rules 1 and 2 of The Code of Civil Procedure, 1908 has been preferred at the behest of plaintiff seeking interim injunction to restrain the defendant including entities or/and persons acting for and on its behalf, from violating its statutory and common law rights in its registered trademarks 'Glucon-D' and 'Glucon-C' and associated registered label marks, as well as trade dress rights in packaging, and copyright in artwork on such labels and packaging, by using the marks 'Glucose-D' and 'Glucose-C'. The

¹ Whether the reporters of the local papers may be allowed to see the judgment?

products are glucose-based powders combining glucose and Vitamin D or Vitamin C to be mixed with water and consumed as an energy drink which are sold and manufactured by both parties. The subject matter of the plaint is a commercial suit as defined in Section 2(1)(xvii) of The Commercial Courts Act, 2015.

2. Plaintiff, Zydus Wellness Products Ltd, is an Indian company engaged in the business of food, nutrition and skincare products. The plaintiff is, inter alia, the registered proprietor of several trademarks, but for the purpose of the present plaint, the trademarks 'Glucon-D' and 'Glucon-C' are the ones relevant for consideration. Products under this brand were first launched in 1933 by Plaintiff's predecessors. 'Glucon-D' was registered in India in 1975 and 'Glucon-C' was registered around 1985.

3. Initially, these trademarks were used in India by Glaxo Laboratories, then Heinz India Pvt. Ltd. under license from Heinz Italia S.p.a., however vide two separate deeds of assignment dated 01.02.2020 and 23.01.2019, Heinz Italia S.p.a. transferred ownership of trademarks and all intellectual property rights to Heinz India Pvt. Ltd. (Annexure-C). Subsequently, in

2019, Plaintiff and Heinz India Pvt. Ltd. merged via a scheme of amalgamation and Plaintiff became the owner of brands like 'Glucon-D' and 'Glucon-C' amongst others. (Annexure-D)

4. Plaintiff claims to be one of India's leading food, nutrition and skincare product companies with leading brands like 'Glucon-D', 'Glucon-C', 'Nuralite', 'Complan', 'Sampriti', 'Nycil', 'EverYuth', 'Sugar Free' etc. having enormous global presence.

5. Defendant, Leeford Healthcare Ltd. is an Indian Company engaged in the business of generic pharmaceuticals and wellness products. Defendant claims to be using the mark since 17 years without any objection and the packaging in question for the past 4 years. The defendant's mark 'Rock On' is registered as a word mark under Class 5.

6. A Cease and Desist notice was served upon the defendant on 17.04.2023 by the plaintiff. The defendant replied on 13.05.2023, pursuant to which the plaintiff made further attempts to resolve the matter amicably, including through subsequent letter dated 21.06.2023. However, since no satisfactory outcome resulted from the said communications, the

plaintiff instituted the present suit alongwith an interim application for redressal of its grievances.

7. Precisely the case of the plaintiff is that the defendant uses the trademarks 'Glucose-D' and 'Glucose-C' for glucose based instant energy drink thereby misappropriating and copying packaging/labeling and artwork therein which is deceptively similar, if not identical, to Plaintiff's packaging for 'Glucon-D' and 'Glucon-C' marks/products, thus being trade dress and copyright infringement.

8. Plaintiff is asserting the following registered trademarks as infringed:

- TM No. 324132 for Class 29
- TM No. 305664 for Class 30
- TM No. 324131 for Class 32
- TM No. 538402 for Class 5
- TM No. 538403 for Class 30
- TM No. 1323811 for Class 30
- TM No. 1323810 for Class 30
- TM No. 5820259 for Class 30
- TM No. 5820266 for Class 30
- TM No. 5830267 for Class 5 (pending)
- TM No. 5820260 for Class 5 (pending)

Arguments on behalf of the Plaintiff

9. Mr. Guru Natraj, learned counsel duly assisted by Ms. Shradha Karol, Advocate for the plaintiff submitted that plaintiff relies on its trade mark registrations for 'Glucon-D' and 'Glucon-C' family of marks. The family of marks includes registrations for the words per se and for the distinctive packaging with certain essential elements and trade mark applications, and also decades-long uninterrupted and continuous use of such marks whether word or packaging.

10. He submitted that since plaintiff's products have been in the market since 1930's, 'Glucon-D' and 'Glucon-C' trademarks are entitled to well-known trademarks status within the meaning of Section 2(1)(zg) of The Trade Marks Act, 1999 and are entitled to the highest level of protection. He submitted that plaintiff has built up this reputation and goodwill over time, through continuous and uninterrupted use, and any such unauthorized use of the earlier, well-known, and registered trademark or any deceptively similar mark, like 'Glucose-D' and 'Glucose-C', by any third party results in dilution and tarnishing of goodwill and reputation of Plaintiff and its trademarks. He submitted that in the present case defendant is indulging in

unfair competition by attempting to piggyback on plaintiff's reputation and goodwill associated with the products since the year 1933.

11. Mr. Natraj, contended that the defendant's use of the expression 'Glucose-D' amounts to infringement of the Plaintiff's registered trademarks bearing Nos. 324132, 305664, and 324131 in Classes 29, 30 and 32 respectively, as the impugned mark is deceptively similar to the Plaintiff's well-known and registered mark 'Glucon-D'. Additionally, it was contended that the Defendant's use of the mark 'Glucose-C' infringes the Plaintiff's registered trademarks bearing Nos. 1485282 and 395430 in Classes 5 and 30 respectively, since the said mark is phonetically, visually, and structurally similar to the Plaintiff's registered trade mark 'Glucon-C', and is likely to cause confusion and deception among consumers as to the source and origin of the goods.

12. In this regard, learned counsel placed reliance upon the judgment of Delhi High Court in **Natures Essence Pvt. Ltd. V. Photogreen Retail Solutions Pvt. Ltd., 2021 SCCOnLine**

Del 1538, wherein principles to assess 'deceptive similarity' are given. Relevant portion the judgment is reproduced as under:

"**57.** On the aspect of deceptive similarity, this Court has, in its recent decision in *FDC Ltd. v. Faraway Foods Pvt. Ltd.*¹², culled out the following principles from, *inter alia*, the judgements in *Satyam Infoway (P) Ltd. v. Siffynet Solutions (P) Ltd.*¹³, *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*¹⁴, *Kaviraj Pt. Durga Dutt Sharma*⁶, *National Sewing Thread Co. Ltd. v. James Chadwick & Bros Ltd.*¹⁵, *Corn Products Refining Co. v. Shangrila Food Products Ltd.*¹⁶, *Amritdhara Pharmacy v. Satya Deo Gupta*¹⁷, *K. R. Krishna Chettiar v. Shri. Ambal & Co.*¹⁸, *F. Hoffman-La Roche & Co. Ltd. v. Geoffrey Manners & Co. Pvt. Ltd.*¹⁹, *Mahendra & Mahendra Paper Mills Ltd. v. Mahindra & Mahindra Ltd.*²⁰, *Laxmikant v. Patel v. Chetanbhai Shah*²¹, *Khoday Distilleries Ltd. v. Scotch Whisky Association*²², *Nandhini Deluxe v. Karnataka Co-operative Milk Producers Federation Ltd.*²³ and *Wockhardt Ltd. v. Torrent Pharmaceuticals Ltd.*²⁴:

- (a) In assessing deceptive similarity, the class of the customer who would purchase the product is relevant. The look/appearance, and the sound, of the trade marks, as well as the nature of the goods, are all relevant considerations. Surrounding circumstances are also relevant.
- (b) The onus of proof is on the plaintiff who alleges passing off. As against this, in an opposition to the registration of a trade mark, the onus to prove deceptive similarity is on the defendant who seeks non-registration, or removal of the trade mark from the register.
- (c) "Confusion" refers to the state of mind of the customer who, on seeing the mark, thinks that it differs from the mark on the goods which he has previously bought, but is doubtful whether that impression is not due to imperfect recollection. The question is one of first impression.
- (d) This is especially true in the matter of phonetic similarity. A meticulous comparison of the words, syllable by syllable, is to be avoided. The possibility of careless pronunciation and speech, both on the part of the buyer walking into the shop, as well as the shop assistant, is also required to be factored into consideration.
- (e) The matter has to be examined from the point of view of a person of average intelligence and imperfect recollection. It has to be seen as to how such a purchaser would react to the trade mark, the association which he would form and how he would connect the trade marks with the goods he would be purchasing.
- (f) *The Pianotist* test²⁵, postulated over a century ago, has repeatedly been endorsed by the Supreme Court, as the definitive test to be adopted while comparing rival trade marks. According to this test, the

Court is required to judge the rival trade marks by their look and sound, and consider,

- (i) the goods to which they are to be applied,
- (ii) the nature and kind of customer who would be likely to buy those goods,
- (iii) all surrounding circumstances and
- (iv) the consequences which would follow if each of the marks is used in the normal way as the trade mark for the goods of the respective owners.

While doing so, the common part of the words forming the competing marks may not be decisive. The overall similarity of the composite words is required to be seen, having regard to the circumstance (if applicable) that both are on like goods of similar description. The test to be applied is whether, if the two marks are used in a normal and fair manner, there is likelihood of confusion or deception.

- (g) The whole word/mark is to be considered. An ordinary man would not split a word or name, in a trade mark, into its components, but would go by the overall structural and phonetic similarity of the marks at the nature of the goods previously purchased, or of which he has been told and which he wants to purchase. It has to be examined whether the totality of the trade mark of the defendant is likely to cause deception/confusion or mistake in the minds of the persons accustomed to the existing trade mark of the plaintiff.
- (h) The resemblance may be phonetic, visual or in the basic idea represented by the plaintiff's mark. The Court is, however, required to apply both the phonetic and the visual tests. At times, ocular similarity may be sufficient to find possibility of confusion/deception, even if the marks are visually dissimilar, though ocular similarity, by itself, may not, generally, be the decisive test. Where, however, (i) in all other respects, the marks of the plaintiff and defendant are different, (ii) the word/words, in the marks, which are phonetically similar, cannot be regarded as the dominant word, or essential feature, in the marks, and (iii) the surrounding circumstances also belie any possibility of confusion, it has been held that deceptive similarity cannot be found to exist merely on the basis of phonetic similarity or even identity. The matter, apparently, is always one of fact. The Court would have to decide, on a comparison of the two marks, and the parts thereof which are phonetically similar, as to whether such phonetic similarity is likely, considering all other circumstances, to confuse or deceive a purchaser of average intelligence and imperfect recollection, always bearing in mind the nature of the goods, and the degree of circumspection which would be expected of the purchasers who would purchase such goods.

- (i) The Court is required to examine whether the essential features of the plaintiff's mark are to be found in the mark of the defendant. Identification of the essential features is a question of fact, left to the discretion of the Court.
- (j) No objective standards are possible, regarding the degree of similarity which is likely to cause deception. It has to be seen from the viewpoint of the purchasers of the goods.
- (k) The test to be applied would depend on the facts of the case. Precedents are valuable only to the extent they specify tests for application, and not on facts.
- (l) On the issue of deceptive similarity, and especially with respect to the aspect of phonetic similarity, English cases are not of relevance. English cases are useful only to the extent they aid in understanding the essential features of trade mark law. The tests for deceptive similarity, which apply in other jurisdictions, may not always apply in India."

13. In the afore background of the case, learned counsel submitted that while deciding the question of deceptive similarity, these principles have to be followed.

14. Mr. Nartaj, submitted that over the years slight changes were incorporated in the packaging of the product, however, certain essential features of packaging of 'Glucon-D' retained through the years, including in the Plaintiff's current packaging, as under:

- use of coined phrase 'Glucon-D' as a trademark;
- distinctive colour combination per flavour - Regular, Tangy Orange, Nimbu Pani or Mango Blast;
- geometrical shape such as an inverted triangle with 'Glucon-D' written across in a stylized form, with a GD stylised logo and Instant Energy written below

- battery image used as figurative comparison between 'Glucon-D' and other ordinary sucrose-based drinks;
- use of tagline Instant Energy on the packaging face below 'Glucon-D' and on unique indentation on the side on a double-headed arrow background preceded with the battery-recharge level imagery;
- use of a Happy Family motif.

15. He submitted that such long, uninterrupted and extensive use of the overall colour combinations, combination of essential elements such as 'Instant Energy' tagline, 'Happy Family' motif in variations, and use of battery related motifs to depict a recharge of energy level as well as 'Glucon-D' combined with the large market share have resulted in the formation of an indelible association of such features and products with such packaging solely and exclusively with Plaintiff and act as an unambiguous and clear source identifier. It was further submitted by Mr. Natraj that 'Glucon-C' was first registered in 1982, and plaintiff's predecessor launched it in orange variant in 1984, subsequently when orange flavor was moved to 'Glucon-D', 'Glucon-C' was sold in a variant called 'ImmunoFizz' which was discontinued. He submitted that although the product has been discontinued, plaintiff intends to launch it very soon.

16. Mr. Natraj submitted that defendant continues to advertise, offer for sale and promote the impugned product despite multiple attempts by plaintiff to resolve the matter, including a Cease & Desist notice to defendant on 17.04.2023, which has been discussed in the earlier part of the judgment.

17. Learned Counsel submitted that the products have to be seen from the point of view of a man with average intelligence and of imperfect recollection. He submitted that average person is not likely to remember the fine distinctions of differentiating plaintiff products 'Glucon-D' and 'Glucon-C' with defendant's 'Glucose-D' and 'Glucose-C'. In this regard he placed reliance upon judgment of Hon'ble Apex Court in **Corn Products Refining Co. v. Shangrila Food Products Ltd., AIR 1960 SC 142**, wherein it was held as under:

"19. We also agree with Desai, J., that the idea of the two marks is the same. The marks convey the ideas of glucose and life giving properties of vitamins. *The Aquamatic case (Harry Reynolds v. Lafferty's Ltd.)* [1958 RPC 387] is a recent case where the test of the commonness of the idea between two marks was applied in deciding the question of similarity between them. Again, in deciding the question of similarity between the two marks we have to approach it from the point of view of a man of average intelligence and of imperfect recollection. To such a man the overall structural and phonetic similarity and the similarity of the idea in the two marks is reasonably likely to cause a confusion between them."

18. Learned counsel also placed reliance upon **K.R. Chinna Krishna Chettiar v. Sri Ambal and Co., Madras and anr., 1969(2) SCC 131**, relevant para is reproduced as under:

“10. Mr Sen stressed the point that the words Ambal and Andal had distinct meanings. Ambal is the consort of Lord Siva and Andal is the consort of Ranganatha. He said that in view of the distinct ideas conveyed by the two words a mere accidental phonetic resemblance could not lead to confusion. In this connection he relied on *Venkateswaran Law of Trade and Merchandise Marks*, 1963 Ed., p. 214, *Kerly Law of Trade marks and Trade Names*, 9th Edn., p. 465, Article 852 and the decision *Application by Thomas A. Smith Ltd., to Register a trade mark*. [(1913) 30 RPC 363] In that case Neville, J., held that the words “limit” and “summit” were words in common use, each conveying a distinctly definite idea; that there was no possibility of any one being deceived by the two marks; and there was no ground for refusing registration. Mr Sen's argument loses sight of the realities of the case. The Hindus in the south of India may be well aware that the words Ambal and Andal represent the names of two distinct Goddesses. But the respondent's customers are not confined to Hindus alone. Many of their customers are Christians, Parsees, Muslims and persons of other religious denominations. Moreover, their business is not confined to south of India. The customers who are not Hindus or who do not belong to the south of India may not know the difference between the words Andal and Ambal. The words have no direct reference to the character and quality of snuff. The customers who use the respondent's goods will have a recollection that they are known by the word Ambal. They may also have a vague recollection of the portrait of a benign goddess used in connection with the mark. They are not likely to remember the fine distinctions between a Vaishnavite goddess and a Shivaite deity.”

19. While referring to the Market Share Data compiled by AC Nielsen for year 2021 till 28.02.2022 (pg. 184 of plaintiff's documents), learned counsel for the Plaintiff submitted that the Plaintiff's product, which is alleged to have been infringed, commands a market share of more than **58%** in its respective segment. It was contended that such figures clearly demonstrate the Plaintiff's substantial market presence and that, over the years, the Plaintiff's product has acquired significant reputation,

goodwill, and brand recognition amongst customers owing to its consistent quality and widespread popularity.

20. Mr. Natraj relied upon 'sales figure' table from the pleading for the years 1994-2002 and 2011-2022 as well as on notarized certificates of Chartered Accountant (Annexure L) for the product 'Glucon-D' and submitted that over the years, owing to tremendous amount of time, effort and resources in popularizing the brand, the brand has generated colossal returns which have only increased substantially over the years, and defendants cannot be permitted to take advantage of the goodwill that plaintiff has created. He also placed reliance upon 'promotional expense table' to suggest that tremendous effort, time and money has been incurred by plaintiff to build a brand identity.

21. While referring to Section 29 of the Act, Mr. Natraj stated that defendant's acts of using 'Glucon-D' and 'Glucon-C' alongwith impugned marks and use of label/packaging is an infringement within the meaning of each of Sections 29(1), 29(2)(b)& (c), 29(6), 29(7), 29(8) & 29(8) of the Act.

22. It was submitted that the Defendant's use of the impugned marks on business-to-business websites as well as in brick and motor retail shops on product packaging which is visually and phonetically deceptively similar to the Plaintiff's registered marks and label registrations, including TM No. 5820259 in Class 30 for the Plaintiff's Regular, Nimbu Pani and Mango Blast variants. The Defendant's Regular and Orange variants, according to the Plaintiff, reproduce key elements of the Plaintiff's packaging thereby satisfying the essentials of infringement under Sections 29(1) and 29(2)(b) of the Act.

23. Learned counsel further argued that the Defendant's use of identical marks for identical goods attracts the statutory presumption of likelihood of confusion under Section 29(3), thereby fulfilling the ingredients of infringement under Section 29(2)(c).

24. It was also contended by learned counsel representing plaintiff that the Defendant has affixed the impugned marks to its goods and packaging, offered them for sale, advertised them online, and stocked them for such purposes, thereby attracting Section 29(6)(a), (b), and (d).

25. Further, the Defendant has, despite knowledge of the Plaintiff's prior rights, deliberately and willfully displayed and advertised the impugned marks which are identical or deceptively similar to the Plaintiff's registered trademarks, constituting infringement under Section 29(7).

26. He further submitted that by reproducing essential features of the Plaintiff's label and by minimally altering the Plaintiff's mark (*substituting 'n' with 'se'*), the Defendant has sought to take unfair advantage of the Plaintiff's goodwill and reputation, thereby causing detriment to the distinctive character of the Plaintiff's marks thereby violating Section 29(8) of the Act.

27. Mr. Natraj submitted that Defendant's packaging and overall trade dress are deceptively similar to those of the Plaintiff, as noticed by just a simple visual comparison. In one instance of online advertisement and offer for sale, the Defendant has used the Plaintiff's own packaging while claiming to be the manufacturer. In other instances, the marks 'Glucose-D' and 'Glucose-C' are displayed prominently at the center of the packaging to attract consumer attention, using a font style and colour combination similar to that of the Plaintiff, along with the

tagline 'Instant Energizer' written in an identical manner below the impugned marks, accompanied by a Happy Family motif. In this regard, he submitted that the impugned marks and packaging bear no independent association with the Defendant and are evidently derived from the Plaintiff's registered trademarks 'Glucon-D' and 'Glucon-C', as well as the packaging and trade dress associated therewith.

28. Learned counsel for the Plaintiff submitted that 'Glucon-D' and 'Glucon-C' qualify as well-known trademarks within the meaning of Section 2(1)(zg) of the Act and defendant's use of the deceptively similar marks 'Glucose-D' and 'Glucose-C', along with identical or substantially similar trade dress, constitutes passing off. He submitted that all essential and distinctive features of the Plaintiff's packaging and trade dress have been copied by the Defendant, leaving no distinction between the two competing products. Consequently, the Defendant's conduct amounts to infringement to exploit the goodwill and reputation that the Plaintiff and its predecessors have developed over more than nine decades of continuous use.

29. Learned counsel for the Plaintiff submitted that the Plaintiff's packaging, labels, and artwork constitute artistic works protected under Section 2(c) of the Copyright Act, 1957, and that the Plaintiff is the absolute owner of such copyright. He further submitted that the Defendant's packaging and label designs are colourable and slavish imitations of the Plaintiff's distinctive 'Glucon-D' labels and their variants. The overall layout, get-up, and arrangement of features in the Defendant's products are deceptively similar to those of the Plaintiff and therefore amount to infringement within the meaning of Sections 51 and 55 of the Copyright Act, 1957.

30. Mr. Natraj, further argued that no balance of convenience lies in favour of the Defendant, as it can easily adopt a distinct mark and packaging. Consequently, no prejudice would be caused to the Defendant if it is restrained from using deceptively similar marks. The Plaintiff and its predecessors have invested substantial resources in developing and popularizing 'Glucon-D' and 'Glucon-C' brands, and the Defendant's is unjustly profiting from Plaintiff's goodwill, as such the balance of convenience, clearly lies in favour of the Plaintiff.

31. Learned counsel further submitted that the Defendant's deliberate and willful acts of infringement have caused serious damage to the Plaintiff's goodwill and reputation, resulting in dilution of the Plaintiff's trademarks and erosion of public trust. The injury suffered by the Plaintiff is irreparable and incapable of monetary assessment. Unless restrained, the Defendant's infringing conduct will continue to cause ongoing harm to the Plaintiff's business and brand.

32. Next, learned counsel submitted that the cause of action first arose in April 2023, when the Plaintiff discovered online advertisements of the infringing products on third-party platforms such as Torus Health and 1mg.com. It further arose in May 2023, when the Defendant, instead of discontinuing such use, falsely asserted prior user rights over the marks 'Glucose-D' and 'Glucose-C'. He further submitted that the cause of action was revived in August 2024, when the infringing listings, previously removed, resurfaced across multiple online platforms. The cause of action, it was contended, is continuous, as the Defendant continues to advertise, market, and sell the infringing goods. It was further submitted that the present suit, has also

been filed on a *quia timet* basis, as the Plaintiff has credible reason to believe that the Defendant intends to release large quantities of the infringing products.

33. Mr. Natraj submitted that this Hon'ble Court possesses territorial jurisdiction under Section 20 of the Code of Civil Procedure, 1908, as the Defendant maintains a major manufacturing facility within District Solan, Himachal Pradesh, and advertises and offers the impugned goods for sale through e-commerce platforms accessible to consumers in this jurisdiction. It was further submitted that the infringing products are offered for sale and enquiry within this territorial jurisdiction, including through websites such as 1mg.com and MedPlusMart, thereby conferring jurisdiction on this Hon'ble Court.

34. In light of the afore submissions, learned counsel for the Plaintiff prayed that this Court be pleased to grant interim and ad-interim injunction restraining the Defendant, its directors, distributors, and agents from manufacturing, selling, advertising, or dealing in goods bearing the impugned marks 'Glucose-D' and 'Glucose-C', or any other mark, label, or packaging deceptively similar to the Plaintiff's 'Glucon-D' and 'Glucon-C' trademarks

and trade dress, and to pass such other orders as may be deemed just and proper in the interest of justice.

Arguments on behalf of the Defendant

35. At the very outset, Mr. Neeraj K. Grover, Advocate duly assisted by Mr. Yash Sharma, Advocate stated that mere pleading that there is an urgent and urgent interim relief is required to be granted, may not be sufficient to come out of the provisions contained in Section 12-A of The Commercial Courts Act, which clearly provides that before filing suit, if any, plaintiff is obliged to resort to pre-institution mediation. In this regard, he placed reliance upon judgment of Hon'ble Apex Court in **Dhanbad Fuels P Ltd. V. Union of India, Appeal (Civil), 6846 of 2025**, decided on 15.05.2025, relevant paras are reproduced as under:

“59. Thus, although suits which were instituted before the date of the decision in Patil Automation (supra) may not be rejected under Order VII Rule 11 for not complying with Section 12A of the 2015 Act, unless they fall within the exceptional categories described in the said decision itself, yet this would not obviate the requirement of giving the parties a chance to attempt to resolve the disputes through mediation as envisaged under Section 12A of the 2015 Act. One of the ways by which this can be achieved is by keeping the suit in abeyance and referring the parties to a time-bound mediation and only proceeding with the suit once the report of the mediator is received. This approach would ensure that even if not pre-institution, the parties at the very least get an opportunity to resolve the disputes through mediation post the institution of the suit. This in no way means that Section 12A envisages

post-institution mediation. Post-institution mediation, while keeping the suit in abeyance, is only envisaged for the limited category of cases which are not covered by the prospective declaration made in Patil Automation (supra) as the rejection of complaints under Order VII Rule 11 has been done away with in the interest of justice in such category of cases. This approach also received the tacit approval of this Court in Patil Automation (supra), wherein while disapproving the reasoning adopted in the order impugned therein, the Court refused to interfere with the impugned order which had referred the parties to mediation while keeping the suit in abeyance.

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62. In light of the aforesaid discussion, we summarise our findings as under:

- a. The decision of this Court in Patil Automation (supra) lays down the correct position of law as regards Section 12A of the 2015 Act by holding it to be mandatory in nature.
- b. As held in paragraph 104 of the decision in Patil Automation (supra), the declaration of the mandatory nature of Section 12A of the 2015 Act relates back to the date of the Amending Act.
- c. As held in paragraph 113.1 of the decision in Patil Automation (supra), any suit which is instituted under the 2015 Act without complying with Section 12A is liable to be rejected under Order VII Rule 11. However, this declaration applies prospectively to suits instituted on or after 20.08.2022.
- d. A suit which contemplates an urgent interim relief may be filed under the 2015 Act without first resorting to mediation as prescribed under Section 12A of the 2015 Act.
- e. Unlike Section 80(2) of the CPC, leave of the court is not required to be obtained before filing a suit without complying with Section 12A of the 2015 Act.
- f. The test for “urgent interim relief” is if on an examination of the nature and the subject-matter of the suit and the cause of action, the prayer of urgent interim relief by the plaintiff could be said to be contemplable when the matter is seen from the standpoint of the plaintiff.
- g. Courts must also be wary of the fact that the urgent interim relief must not be merely an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12A of the 2015 Act.
- h. Even if the urgent interim relief ultimately comes to be denied, the suit of the plaintiff may be proceeded with without compliance with Section 12A if the test for “urgent interim relief” is satisfied notwithstanding the actual outcome on merits.
- i. Suits instituted without complying with Section 12A of the 2015 Act prior to 20.08.2022 cannot be rejected under Order

VII Rule 11 on the ground of non-compliance with Section 12A unless they fall within the exceptions stipulated in paragraph 113.2 and 113.3 of the decision in Patil Automation (supra).

j. In suits instituted without complying with Section 12A of the 2015 Act prior to 20.08.2022 which are pending adjudication before the trial court, the court shall keep the suit in abeyance and refer the parties to time-bound mediation in accordance with Section 12A of the 2015 Act if an objection is raised by the defendant by filing an application under Order VII Rule 11, or in cases where any of the parties expresses an intent to resolve the dispute by mediation.”

36. Mr. Grover, learned counsel for the defendant argued that the suit and the application for interim injunction filed by the plaintiff are liable to be dismissed as not only has the plaintiff concealed relevant facts, but it has also made several wrong & misleading claims in the plaint which are false to its own knowledge, thus, in view of such conduct of the plaintiff it is not entitled to any discretionary relief of permanent or temporary injunction as the same is barred under the provisions of Section 41(i) of the Specific Relief Act, 1963.

37. It was submitted on behalf of the defendants that due to constant change in the packaging of the plaintiff, a consumer of average intelligence cannot be expected to remember all the changing features associated with the same brand name. He also submitted that no exclusive feature and what has been claimed is set out in the plaint.

38. He submitted that plaintiff, while claiming exclusivity over its alleged trademark 'Glucon-D', has concealed from this Hon'ble Court that the Registrar of Trade Marks had imposed disclaimers in several of its registrations, including disclaimers over the letter 'D' and other descriptive components of its marks. He submitted that moreover, while obtaining registration for 'Glucon-D' (TM No. 305664), the Plaintiff had taken a contrary stand before the Registrar. Upon being confronted with citations of prior Gluco-formative marks such as GLUCOTONE, GLUCANIL, GLUCOSE-D, and GLUCOSE under Section 11 of the Trade and Merchandise Marks Act, 1958, the Plaintiff had expressly stated that (pgs. 1-2 of plaintiff's documents):

"The applicants agree to disclaim the letter 'D'... The mark 'GLUCON-D' is coined from the word glucose and vitamin D... The marks cited such as GLUCANIL and GLUCOTONE..are not confusingly similar. The words GLUCOSE-D and GLUCOSE are common to the trade and no one can have monopoly rights in such descriptive words."

39. Similarly, while seeking registration of 'Glucon-D' under TM No. 324131, the Plaintiff, when confronted with the prior mark 'GLUCOMAX', averred that the word 'Gluco' is common to trade for glucose-based products. (pg. 3 of plaintiff's documents) He submitted that this admission was duly recorded

by the Assistant Registrar of Trade Marks in his order dated 03.03.1978. Thus, plaintiff is stopped from claiming 'Glucose-D' to be similar to 'Glucon-D' by virtue of its earlier stand that 'Gluko' is common to trade. In this regard he placed reliance upon judgment of Hon'ble Apex Court in **SK Sachdeva v. Shri Educare Ltd., 2016 SCC OnLine Del 473**, relevant portion is reproduced as under:

“11. The trademark in issue in the said application was 'SHRI RAM EDUCARE'. Perusal of the objections raised by the Trademark Registry shows that the Trademark Registry was, *prima facie*, of the view that the trademark sought to be registered was devoid of any distinctive character and similar trademarks were already on record of the register for same or similar goods or services. The Class in issue was Class 41 dealing with education.

.....
13. The categorical stand taken by the respondents by their letter dated 08.06.2012 is that 'SHRI RAM' is one of the popular figures and deities in Hinduism and, as such, no one proprietor can claim exclusive rights in respect of the mark 'SHRI RAM'. It is further contended that from the search reports attached with the examination report of the Trademark Registry it was evident that several 'SHRI RAM' formulative marks were peacefully co-existing on the register of trademarks and the said mark was a fancy juxtaposition of the words 'SHRI RAM' and 'EDUCARE' and as a whole the subject mark did not, in any manner, directly convey the meaning of the services for which the registration was sought and the reference, if any, is at best suggestive and a multi-process reasoning is required to ascertain the descriptive element and that the average consumers normally perceive the mark as a whole and do not analyze its various details.
.....

16. The stand taken by the respondents by its letter dated 08.06.2012 was that the word 'SHRI RAM' represented a popular figure and deity in Hinduism and no one proprietor

could claim exclusive rights on the mark 'SHRI RAM'. It was further categorically admitted that several 'SHRI RAM' formulative marks were co-existing on the register of trademarks in respect of the same services i.e. of schools. This fact was conveniently omitted by the respondents from the plaint. It is not possible to believe that the respondents were not aware of the stand taken on 08.06.2012 inasmuch as the respondents only a few days prior to the filing of the suit on 24.04.2014 had written the letter dated 15.04.2014 to the Trademark Registry withdrawing the earlier stand taken by letter dated 08.06.2012. There is no basis/rationale given by the respondents for withdrawal of the said admissions made by the said letter dated 08.06.2012. The admissions made by letter dated 08.06.2012 have a material bearing on the stand of the appellants in the subject suit. The fact that the respondents did not mention about the letter dated 08.06.2012 in the plaint, in our view, amounts to a clear case of misrepresentation and concealment of material facts that have a bearing on the very case set up by the respondents in the plaint."

40. Reliance, in this regard, was also placed upon **Wow Momo Foods P Ltd. V. Wow Burger, 2025 BHC 8044** and **Phonepe P Ltd. Vs Resilent Innovations, 2023 SCC OnLine 764**, which shall be dealt by this Court in the later part of the judgment.

41. Mr. Grover, further submitted that the Plaintiff has wrongly averred that a Cease and Desist notice was issued by the Plaintiff upon the Defendant in March, 2024, whereas such C & D notice was issued almost 17 months before the filing of the suit i.e. in third week of April 2023 by virtue of notice dated 17.04.2023. He submitted that plaintiff has falsely stated in the

plaint that the screenshot reproduced therein from a website named 'Torus' or even other screenshots reproduced in para 4 were assailed in the C & D Notice, whereas none of the said screenshots were assailed in the C & D Notice dated 17.04.2023.

42. He submitted that plaintiff has wrongly and falsely averred in the plaint that the defendant was marketing selling the products under the mark 'Glucon-D' whereas the defendant has never used the mark 'Glucon-D' nor has ever marketed or sold any of its products under the said mark. Mr. Grover vehemently denied that Defendant's products were pulled down and reappeared after April 2023, whereas the Defendant has continuously marketed its 'Rock-On Glucose-D' and 'Rock-On Glucose-C' products during that entire period.

43. Learned counsel submitted that though plaintiff has averred massive, perhaps exaggerated sales, but not even a single invoice has been placed on record to prove the same. He submitted that Plaintiff has falsely pleaded that defendant has a manufacturing facility in Solan District, Himachal Pradesh. The said premises (Plot Nos. 79A and 79B, Phase-II, Village Thana,

Tehsil Baddi) belong to an independent job-work manufacturer and not to the Defendant. Thus, the Plaintiff's attempt to invoke jurisdiction of this Court under Section 20 CPC is misconceived.

44. Mr. Grover submitted that Plaintiff has falsely projected continuous and extensive use of the mark 'Glucon-C'. However, from the plaint, it is evident that the Plaintiff discontinued use of this mark long ago, as such it cannot claim distinctiveness or exclusivity over the mark 'Glucon-C', and the registrations under TM Nos. 395430 and 1485282 are prima facie liable to be removed under Section 47(1)(b) of the Act.

45. Learned counsel submitted that Defendant's use of generic words like 'Glucose-D' and 'Glucose-C' is merely descriptive of the nature, kind, and intended purpose of the goods being glucose-based energy drink containing Vitamin D and Vitamin C respectively. Such use is expressly protected under:

- Section 30(1)(a): allowing use in accordance with honest commercial practices without taking unfair advantage or causing detriment.
- Section 30(2)(a): permitting use indicating kind, quality, or intended purpose of goods.
- Section 35: protecting bona fide descriptive use.

46. While placing reliance upon **Asian Paints Ltd. Vs Home Solutions, Bombay High Court in Notice of Motion No. 2961 of 2007 in Suit No. 2178 of 2007**, he submitted that the use of such words like 'Glucose-D' and 'Glucose-C' which are totally generic in nature and indicates the characteristics of goods/services cannot be restrained under the applicable principles of trademark law. Relevant para of the judgment is as under: -

“10. The defendant has also rightly invoked provisions of Section 30(2) to contend that it will not be a case of infringement of registered mark where the use in relation to the goods or services indicates the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services or other characteristics of goods or services. For the time being, suffice it to observe that the defendant has made out a formidable defence as is available under the provisions of the Act. Thus understood, it is not a case of dishonest adoption of corporate name "HOME SOLUTIONS" or of mark "HOME TOWN". As is observed earlier, there is no similarity in the mark used by the defendant with the mark of the plaintiff.”

47. Reliance in this regard is also place upon the following judgments, which would be discussed in the later part of this order:

- **Lotus Herbal Pvt. Ltd. Vs DPKA Universal, Delhi High Court in CS (Comm.) 454/2023** decided on 25.01.2024
- **`Yatra Online vs March Conferences & Events Delhi High Court in 2025 DHC 7167** decided on 22.08.2025

48. Learned counsel for the defendant submitted that their packaging bears its registered trademark 'Rock-On' along with distinct design elements and colour combinations. The overall trade dress of the Defendant's and Plaintiff's products are different, therefore, there exists no likelihood of confusion, deception, or association in the minds of the purchasing public and as such Section 29(1) and 29(2) are not attracted in the facts of the present case. In this regard he placed reliance upon **Pernod Ricard India v. Karanveer Singh Chhabra, Civil Appeal No. 10638 of 2025** and **Kopran Chemical Co. Ltd. v. Recon Ltd. 1996 SCC OnLine Bom 416.**

49. Mr. Grover stated that 'Glucose-D' and 'Glucose-C' are commonly used as descriptors of the products by numerous members of the trade including large manufacturers like Dabur, Baidyanath, Rasna etc. and such use is common to trade, as such plaintiff cannot restrain the defendant. In this regard,

reliance was placed upon **Skyline Education Institute vs SL Vaswani, Civil Appeal Nos. 1360-1361 of 2005 with Civil Appeal No. 1362 OF 2005.**, relevant para of the judgment is reproduced as under:

“26. In our opinion, the findings recorded by the learned Single Judge and the Division Bench on the crucial factors like prima facie case, balance of convenience and equity are based on a correct and balanced consideration of various facets of the case and it is not possible to find any fault with the conclusions recorded by them that it is not a fit case for restraining the respondents from using the word “Skyline” in the name of the institute established by them. It has not been disputed on behalf of the appellant that the word “Skyline” is being used as trade name by various companies/organisations/business concerns and also for describing different types of institutes/institutions. The voluminous record produced by the respondents before this Court shows that in India as many as 117 companies including computer and software companies and institutions are operating by using the word “Skyline” as part of their name/nomenclature. In the United States of America, at least 10 educational/training institutions are operating with different names using “Skyline” as the first word. In the United Kingdom also two such institutions are operating. In view of this, it is not possible to agree with the learned counsel for the appellant that Skyline is not a generic word but is a specific word and his client has right to use that word to the exclusion of others.”

50. Reliance was also placed upon judgment of Hon'ble Apex Court in **JK Kapoor v. Micronix India 1994 Suppl (3) SCC 215**, relevant para of the judgment is as under:

“6. There are two things which impress us. Firstly, the appellant is not manufacturing any one product such as the boosters, which has been mainly taken into consideration by the High Court. He is producing various electrical and electronic apparatus in many of which micro-chip technology

is used. Even the boosters which he manufactures and sells are of two types, viz., transistorised boosters and integrated circuit boosters whereas the respondent-plaintiff manufactures aerial boosters only of the first type. Thus micro-chip technology being the base of many of the products, the word 'micro' has much relevance in describing the products. Further, the word 'micro' being descriptive of the micro technology used for production of many electronic goods which daily come to the market, no one can claim monopoly over the use of the said word. Anyone producing any product with the use of micro-chip technology would be justified in using the said word as a prefix to his trade name. What is further, those who are familiar with the use of electronic goods know fully well and are not likely to be misguided or confused merely by, the prefix 'micro' in the trade name. Once, therefore, it is held that the word 'micro' is a common or general name descriptive of the products which are sold or of the technology by which the products are manufactured, and the users of such products are, therefore, not likely to be misguided or confused by the said word, the only question which has to be prima facie decided at this stage is whether the words 'tel' and 'nix' in the trade names of the appellant and the respondent are deceptive for the buyers and users and are likely to misguide or confuse them in purchasing one for the other. According to us, phonetically the words being totally dissimilar are not going to create any such confusion in the mind of the users. Secondly, even the visual impression of the said two trade names is different. In the first instance, the respondent's trade name 'MICRONIX' is in black and white in slimmer letters and they are ensconced in designs of elongated triangles both above and below the said name. On the other hand, the appellant's trade name 'MICROTEL' is in thick bold letters in red colour without any design around. As regards the logo, the respondent's logo consists of the word 'M' in a slim letter with 'I' sporting a dot on it and drawn in the well of 'M'. Below the letter 'M' in small letters is written the word 'MICRONIX' and all these letters and words are written in white in a black square in north-south direction. As against this, the appellant's logo is one letter, viz., 'M' which is drawn in bold broad letter with its left leg slimmer than all other parts which are in thick broad brush. The letter has also white lines drawn across it which is in blue colour. There is no other letter nor is it set against any background. We are, therefore, unable to see how the visual effect of both the logos will be the same on the mind of the buyers. This being the case, we are of the view that there is not even the remotest chance of the buyers and users being misguided or confused by the two trade

names and logos. Same is the case with the carton which merely reproduces both the trade names and the logos”

51. Thus, in view of above, he submitted that the terms ‘Glucose-D’ and ‘Glucose-C’ are generic and commonly used by several reputed manufacturers. Many registered marks wherein ‘Glucose-D’ are part of the label are registered with the Registrar of Trademarks, hence, the Plaintiff cannot claim monopoly over such generic expressions which are *publici juris* and common to trade. He submitted that it is a settled proposition of law that by registering a phonetic variant or a misspelled variant of a generic word, a plaintiff cannot claim exclusivity over the generic word itself or even another phonetic variant of the generic word.

52. It was further submitted that the Plaintiff’s claim of exclusivity over the depiction of a family on packaging is misconceived. He submitted that there can be no copyright in the mere idea of showing a family. Moreover, the family depictions on the two competing packages are entirely distinct in composition, attire, and arrangement. It was also submitted that Plaintiff’s assertion of exclusivity over green packaging is untenable, as such colour schemes are common in trade for

glucose-based drinks, and the Plaintiff itself uses multiple colour variants for its own products.

53. Mr. Grover submitted that plaintiff is estopped from now claiming similarity between 'Glucon-D/C' and 'Glucose-D/C', having earlier represented to the Registrar that 'Gluco' and 'Glucose' are common to trade and incapable of protection. He submitted that plaintiff cannot be permitted to blow hot and cold in the same breath by taking contradictory stands before different forums. He placed reliance upon certain judgments which are discussed in the later part of the judgment.

54. Lastly, he submitted that the defendant has been using the expressions 'Glucose-D' and 'Glucose-C' for approximately 17 years without objection and even the current packaging of the defendant is in use since over 4 years. Even after issuance of the cease and desist notice in April 2023, the Plaintiff waited over 16 months before filing the present suit. In this regard he submitted that such inordinate delay disentitles plaintiff for any relief and the plaint alongwith application at hand can be dismissed on this sole count. Reliance is placed upon judgment of Delhi High Court in **Shri Gopal Engg and Chemical**

Works v. POMX Laboratory, I.A. 10526/91 in Suit No. 3049/91, relevant para whereof is reproduced as under:

"4. Now, having admittedly come to know of the activities of the defendant in June, 1990 and having also come to know in July, 1990 that the defendant would not change the mark but would continue to trade as in the past, what did the plaintiff do? It waited till the end of September, 1991. Why did it wait till then? Well, there has been some attempt to explain. It is said:

"The plaintiff endeavored to find the said product of the defendant under the trade mark DOCTOR's phenyle level in different markets of the country but the plaintiff could not lay his hands on such impugned goods of defendant bearing the impugned trade mark despite best efforts. The plaintiff also tried to ascertain the business activities of the defendant under the impugned trade mark after the service of legal notice dated 14-6-90 and it was found that the defendant stopped using the impugned trade mark i.e. DOCTOR's phenyle label in relation to his phenyle."

True, it is a preliminary stage calling for an interlocutory order, but it does not mean that I must keep my eyes closed, accept every word the plaintiff says as Gospel truth and lock-jaw the defendant. The Explanation offered, if at all it can be called an Explanation, deserves to be ignored, at least for the present, and the reasons are more than one. What efforts did the plaintiff make in "finding" defendant's product "in different parts of the country"? No details are given. In any case what was it that it had not found already? plaintiff's notice of June 14 1990 shows it knew all that was worth knowing. And, coming to the second limb of the Explanation that after the service of the notice it was "found" that the defendant had "stopped using" the impugned trademark, we are not told, how, when and from where it was so "found". On the other hand, the figures of sale placed on the record by the defendant show that its sales were rather soaring. What to tell of having stopped the user of the impugned mark the defendant was, on plaintiff's own showing, vigorously advertising its product twice a week in one single newspaper. This is what is borne out from the plaint and so also from the letter of July 5, 1991 from an agent of the plaintiff. Incidentally

that letter also shows that the defendant had in fact never "stopped" using the impugned -mark but had rather been marketing its products vigorously and relentlessly. Thus delay in bringing proceedings, which is important in an interlocutory motion, it sought to be explained in a manner, can hardly be accepted. Therefore, it does not seem to me that the plaintiff has really acted with the speed with which it ought to have acted.

5. It was argued that since delay unaccompanied by anything else, is not anymore taken as a bar to a suit for permanent injunction, it should also not cause the Court to refuse interlocutory injunction and that there is no justification. On that point, to make distinction, which the Courts have generally sought to make, between the grant of interim injunction and permanent injunction. I am afraid, I cannot agree, for there are reasons more than one to make the distinction and one of them is that since preliminary injunction is sought upon the theory that there is an urgent need for speedy action to protect the plaintiff's right, by sleeping on them it demonstrates the lack of need for speedy relief.

6. I must, however, confess to my attention having been drawn to a judgment of this Court in Hindustan pencils Private Ltd. v. India Stationary Products Co., MANU/DE/0383/1989 : AIR1990Delhi19 . Since my attention was drawn particularly to paragraphs read the graphs 26 and 29 of the report, they are profitably extracted below:

"26. It appears difficult for me to comprehend the distinction which the courts have sought to make between the grant of interim injunction and permanent injunction. If on the facts which are clearly discernible from the record it appears that after trial a permanent injunction is likely to be granted, notwithstanding the delay on the part of the plaintiff in approaching the Court, there appears to be no reason as to why temporary injunction should be refused."

.....

"29. It would appear to be difficult to accept that relief of temporary injunction should not be granted, because of the delay on the part of the plaintiff even though the Court feels, at that point of time, the ultimately permanent injunction will have to be granted."

I must, before I venture to offer my respectful comments, and it is so well-known already, that every case, being an island unto itself, depends on its own particular facts and that consequently the value of the authorities lies not so much on the actual decision as in the tests applied for determining the disputes in the case of Hindustan pencils use by the defendant of the mark was fraudulent, and on coming to know of infringement the plaintiffs had filed an application cancellation of the registration of defendants copyright followed by a suit for injunction. It was held that neither the delay was such as could be held to be fatal nor could it defeat an action for the grant of a temporary injunction where the use by the defendant of the mark was fraudulent ".The observation made in the above noted paragraphs 26 and 29 must thus be read in that context only .In any case, as any person with a discretion eye would observe, the statement made in the said paragraphs is not unqualified .It is qualified by its own ifs and buts. In paragraphs 26 the qualification starts from "if one the facts..."and in paragraphs 29,it would be cruel, if may say so, the read the sentence: "It appears difficult for me to comprehend the distinction which the have sought to make between the grant of interim injunction and permanent injunction" shorn of what follows thereafter. Any other approach would mutilate the thought process and present a picture with its contours totally distorted. It is for these reasons that I am inclined to hold that the observed made in the judgment lead the plaintiff nowhere.

7. I must, however, hasten to add that I do not decide this motion merely on the ground of delay, though in the present case, that in itself would be sufficient. There is strong prima facie case to show that the defendant has been in open concurrent trade since the year 1983 with business spread out in the State of Uttar Pradesh, a state of which the plaintiff claims to be its center of activity. Moreover, there is nothing to show that because of the presence of the defendant, the business of the plaintiff has suffered or its sale\s have shown decline And, I must also pause to remark that though in the present case the plaintiff does attribute to the defendant an improper and sinister motive, a consideration which Lord Simonds thought ought to be particularly called to attention (See: Office Cleaning Services Ltd. v.Westminster Window and General Cleaners It would be cruel, if I may say so, the lies not so much on Ltd. 1945 63 RPC 39 am obliged to put this consideration completely aside, because from the material on the record, I cannot possibly return any such finding in favors of the plaintiff.

8. It was argued on behalf of the defendant that during the period after the notice it had been expanding its business and had been lulled into a false sense of security and for that reason too grant of such drastic. Injunction as are now sought on an interlocutory basis deserved to be refused. I must confess, I do find the argument attractive.

Balancing the matters as best as I can, it seems to me that, taking into (consideration) the drastic nature of the relief sought, the need for the plaintiff to establish an improper and sinister motive, the defense of open and honest concurrent trading since 1983, and the inordinate unexplained delay on the part of the plaintiff, it is not appropriate to grant any interlocutory relief.

9. Order accordingly.”

55. Reliance is also placed upon judgment of Delhi High Court in **BDA Pvt. Ltd. Vs Paul P. John, IA No. 2399/2007 in CS (OS) 383/2007, is No. 6301/2007 in CS (OS) 383/2007 and is No. 8/2008 in CS (OS) 383/2007**, relevant para is as under:

17. Apart from the question of non-disclosure of material facts, the question of delay also would be an insurmountable hurdle for the plaintiff for the purposes of the grant of an interim injunction. It has already been indicated that the entire consideration, at this stage, is based upon the passing off action, leaving aside the question of infringement which is to be determined only after the IPAB renders its decision on the issue raised under Section 124 of the said Act. It is an accepted proposition that delay and acquiescence would be material considerations for the grant of an interlocutory order. The plaintiff knew about the defendants in 1995-1996. Yet, the plaintiff took no action in respect of the alleged passing off purportedly indulged by the defendants. The cease and desist notice was sent for the first time in 2002 and the suit [CS(OS) 1058/2002] was also filed in that year, i.e., 2002. It was sought to be contended on behalf of the plaintiff that initially the defendants were restricted to the State of Karnataka and that did not hurt the plaintiff much. It is only in the year 2002 when the defendants extended the tentacles of their business beyond the territories of Karnataka that the plaintiff got its

cause of action for instituting the suit for passing off. At this prima facie stage, I am not impressed with this argument. As noted above, the plaintiff was aware of the defendant's mark 'ORIGINAL CHOICE' and that its sales were growing day by day. In fact, as of now, the sales of 'ORIGINAL CHOICE' exceed those of 'OFFICER'S CHOICE'. The plaintiff was thus, all this while, sitting back and allowing the defendants to grow and this was not for a period of a few months or a year or a couple of years but for seven full years from 1995-1996 to 2002. In this period the defendants grew substantially and established their mark 'ORIGINAL CHOICE'. The delay in approaching this Court would, Therefore, come in the way of the plaintiff for the purposes of an interim injunction.

56. Mr. Grover also submitted that no case of passing off or infringement of copyright is made out as the trade dress of the competing products are totally different and plaintiff cannot claim any exclusivity for the use of the generic words like 'Glucose-D' and 'Glucose-C' . He placed reliance upon judgment of Delhi High Court in **Kellogg Company v. Pravin Kumar**, 1996 (1) ArbLR 430 Delhi.

57. Lastly, Mr. Grover submitted that the Plaintiff's reliance on judgment of the Hon'ble Supreme Court dated 18.5.2007 in **Heinz Italia v. Dabur India Ltd, 2007(6) SCC 1** is misconceived as in the said judgment, the use of the words 'Glucose-D' by Dabur was not restrained. In fact, there is no restraint against Dabur even till date from using the words 'Glucose-D'. In this regard, the Defendant relied upon judgment

of the Single Judge and the Division Bench Judgment of Calcutta HC, which is discussed in the 'Analysis part of the judgment. The Division Bench Order also clarified that the earlier Hon'ble Apex Court order only pertained to the Trade Dress earlier used by Dabur and not the word 'GLUCOSE-D'. Thus, reliance is placed judgment of Single Judge of Calcutta High Court in **Heinz Italia Vs Dabur India Ltd** decided on 20.2.2008.

58. On the basis of afore submissions learned counsel for the Defendant contended that the present suit alongwith the interim application be dismissed.

Rebuttal arguments on behalf of the Plaintiff

59. Mr. Natraj, learned counsel submitted that mandatory nature of pre-litigation mediation has to be assessed based on the averments in the plaint and documents filed therewith. The Defendant has not even filed any application under Order VII Rule 11(d) CPC, which would have been the proper course had such an objection existed.

60. While relying upon ***Midas Hygiene v. Sudhir Bhatia and Laxmikant Patel v. Chetanbhai Shah 2004 (3) SCC 90***, learned counsel submitted that delay or procedural lapses do not

defeat an injunction where continuing infringement exists. Contrary to what defendant submitted, Midas (supra) is on delay not defeating interim injunction in trademark cases. Relevant para of the judgment is reproduced as under:

“5. The law on the subject is well settled. In cases of infringement either of trade mark or of copyright, normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adoption of the mark was itself dishonest.”

61. It was stated that defendant's claim that 'Glucose-D' and 'Glucose-C' are both generic and descriptive is self-contradictory. Mr. Natraj submitted that generic mark is one where due to non-assertion, it has become common to the trade, thus, in effect the trade mark rights are lost due to non-assertion and failure to enforce. A descriptive term is term that describes the kind, quality, quantity, intended purpose, value or other characteristics of the goods or services of the product. By definition a descriptive term cannot be registered as a trademark. Additionally, most third-party users relied upon by defendants are either enjoined or have settled with plaintiff (e.g., Rasna). It was also stated that defendant's reliance on purported third party transfer registrations for 'Glucose-D' is self-defeating if

reliance is placed on registrations by the Trade Mark Registry, surely the mark cannot be descriptive.

62. Mr. Natraj submitted that defendant's objection to the CA Certificate is untenable. While placing reliance upon judgment of Hon'ble Apex Court in **Brihan Karan Sugar Syndicate (P) Ltd. v. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana, (2024) 2 SCC 577**, he submitted that a CA certificate is sufficient at the prima facie stage. Its evidentiary value is tested at trial, not at the interlocutory stage.

“17. For establishing goodwill of the product, it was necessary for the appellant to prove not only the figures of sale of the product but also the expenditure incurred on promotion and advertisement of the product. Prima facie, there is no evidence on this aspect. While deciding an application for a temporary injunction in a suit for passing off action, in a given case, the statements of accounts signed by the Chartered Accountant of the plaintiff indicating the expenses incurred on advertisement and promotion and figures of sales may constitute a material which can be considered for examining whether a prima facie case was made out by the appellant-plaintiff. However, at the time of the final hearing of the suit, the figures must be proved in a manner known to law.”

63. Moreover, multiple judicial precedents have recognized 'Glucon-D' as a well-known mark enjoying immense goodwill and distinctiveness acquired over nine decades. Thus, goodwill stands established for interim purposes.

64. Mr. Natraj also submitted that the assertion that 'Rock-ON' is the principal mark is contradicted by defendant's packaging itself since 'Glucose-D' and 'Glucose-C' appear

prominently in large stylized fonts identical to plaintiff's in same letter, colour scheme, and placement, while 'Rock-ON' appears in much smaller print.

65. He submitted that reliance on 1975 Registry correspondence and disclaimers is misplaced as disclaimers made during examination are irrelevant to infringement or passing off proceedings. (**Registrar v. Ashok Chandra, AIR 1955 SC 109 (para 9); Godfrey Philips v. Girnar, (1998) 9 SCC 531 (paras 5-7); Procter & Gamble v. Endolabs, 2000 (3) Mh LJ (paras 6,7,12); Takkar (India) Tea Company v. Soongachi Tea Industries (p) Ltd, 2010 SCCOnLine Del 2723 (para 16)**). It does not mean that 'C' or 'D' are to be ignored while comparing marks. The comparison must be of the marks as whole. Reliance is placed upon judgment of Delhi High Court in **Zydus v. Cipla, 2023 SCCOnLine Del 3785** decided on 03.07.2023, relevant paras of which are reproduced as under:

"181. Mr. Sibal sought to contend that, as the plaintiff has disclaimed exclusivity over the suffixes "C" and "D", while obtaining registrations of the trade marks "GLUCON-C" and "GLUCON-D", the aspect of infringement would have to be examined only by comparing the prefixes "Glucon" with "Gluco", omitting from consideration the disclaimed suffixes "C" and "D".

182. I do not agree. The disclaimer, by plaintiff, of the suffixes "C" and "D", only means that the plaintiff cannot plead infringement against the defendants solely on the ground that the defendants' mark also uses the suffixes "C" and "D". The suffixes "C" and "D", therefore, cannot be a ba-

sis to claim exclusivity, so as to allege infringement by the mark of another person. The disclaimer of exclusivity in respect of the suffixes "C" and "D" does not, however, mean that, while comparing the marks of the plaintiff and the defendants, the said suffixes would be left out of consideration. It is well settled that the marks have to be compared as wholes. While comparing the marks as wholes, the suffixes "C" and "D", though disclaimed, have also to be taken into consideration. The court cannot, therefore, restrict its examination to assessing similarity between "Glucon" and "Gluco" as Mr. Sibal would seek to urge. The comparison has necessarily to be between "Glucon-C" and "Glucon-D" on the one hand and "Gluco-C" and "Gluco-D" on the other."

66. With regard to 'Glucon-C', learned counsel argued that it remains a valid, subsisting registration. No rectification has been filed under Section 47, hence, all rights under Section 28(1) subsist. Moreover, 'Glucon-C' has been reintroduced recently and even if temporarily discontinued, residual goodwill entitles it to protection under the Act.

67. He further submitted that as held in judgment of Mysore High Court in **Products vs. J.P. & Co., 1972 (1) SCC 618**, minor differences do not detract from overall deceptive similarity when broad and essential features are similar and identical. The same reasoning applies here for 'Glucon-D' and 'Glucon-C' and 'Glucose-D' and 'Glucose-C' are deceptively similar in visuals and pronunciation. Relevant para is the judgment is reproduced as under:

"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 colour 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 "Gluko 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. 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 Homes. 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."

Analysis

68. Before this Court goes on to decide the present application after hearing the both the learned counsel for the parties at length, it would be apt to take note of recent judgment of Hon'ble Apex Court in **Pernod Ricard India Pvt. Ltd. & Anr. v. Karanveer Singh Chhabra, Civil Appeal No. 10638 of 2025**, decided on 14 August 2025 in relation to grant of interim injunction. In this recent ruling, the Hon'ble Apex Court has clarified the criteria for granting interim injunctions in cases of

trademark infringement and passing off, relevant para of the judgment is as under:

“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 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*, 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. 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, nondistinctive 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 nondistinctive 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 'BLENTERS 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 'BLENTERS' 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. 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 'BLENTERS PRIDE' is a composite trademark, comprising the suggestive term 'BLENTERS' – 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 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 (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.

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* continue to guide the Courts while determining interim injunction applications in trademark cases. The following criteria are generally applied:

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

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

(iii) Balance of convenience: The court must weigh the inconvenience or harm that may result to either party from the grant or refusal of injunction. If the refusal would likely result in irreparable harm to the plaintiff’s goodwill or mislead consumers, the balance of convenience may favor granting the injunction.

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

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

36.4. In conclusion, the grant of an interim injunction in trademark matters requires the court to consider multiple interrelated factors: *prima facie* case, likelihood of confusion,

relative merits of the parties' claims, balance of convenience, risk of irreparable harm, and the public interest. These considerations operate cumulatively, and the absence of any one of these may be sufficient to decline interim relief."

69. From the aforesaid exposition of law it is clear that each case must necessarily be decided on its own facts and circumstances however, the Court, while exercising its discretion to grant or refuse an interim injunction, must be guided by well-settled equitable principles. The Court is required to examine whether a prima facie case exists, whether there is a likelihood of confusion or deception, and whether the balance of convenience lies in favour of the plaintiff. It must also consider whether the plaintiff would suffer irreparable harm if the injunction is not granted, and whether the grant or refusal of such relief would serve the larger public interest. These factors are not to be viewed in isolation but collectively, as part of a holistic assessment. The absence of any one of these essential ingredients may be sufficient to disentitle a party to interim relief, and the Court must, therefore, weigh all circumstances carefully to ensure that the injunction, if granted, is fair, just, and proportionate.

70. It is settled law that generic and commonly descriptive marks cannot be exclusive to the proprietor of the registered trademark. Section 30 of the Act provides for limits on the effect of registered trademark when the use is in relation indicates kind, quality, intended purpose value, geographical origin, the time of production of goods or rendering of services or other characteristics of the good/services. As per Section 30(2)(a) of the Act, where a mark or expression is indicative of the kind, quality, or other characteristics of the goods, it falls outside the scope of trademark infringement. For the sake of convenience, Section 30 of the Act is reproduced as under:

“Section 30 in The Trade Marks Act, 1999

30. Limits on effect of registered trade mark.—

(1) Nothing in section 29 shall be construed as preventing the use of a registered trade mark by any person for the purposes of identifying goods or services as those of the proprietor provided the use—

(a) is in accordance with honest practices in industrial or commercial matters, and

(b) is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trade mark.

(2) A registered trade mark is not infringed where—

(a) the use in relation to goods or services indicates the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services or other characteristics of goods or services;

(b) a trade mark is registered subject to any conditions or limitations, the use of the trade mark in any manner in relation to goods to be sold or otherwise traded in, in any place, or in

relation to goods to be exported to any market or in relation to services for use or available or acceptance in any place or country outside India or in any other circumstances, to which, having regard to those conditions or limitations, the registration does not extend;

[\(c\)](#)the use by a person of a trade mark—(i)in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk or which they form part, the registered proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark; or(ii)in relation to services to which the proprietor of such mark or of a registered user conforming to the permitted use has applied the mark, where the purpose and effect of the use of the mark is to indicate, in accordance with the fact, that those services have been performed by the proprietor or a registered user of the mark;

[\(d\)](#)the use of a trade mark by a person in relation to goods adapted to form part of, or to be accessory to, other goods or services in relation to which the trade mark has been used without infringement of the right given by registration under this Act or might for the time being be so used, if the use of the trade mark is reasonably necessary in order to indicate that the goods or services are so adapted, and neither the purpose nor the effect of the use of the trade mark is to indicate, otherwise than in accordance with the fact, a connection in the course of trade between any person and the goods or services, as the case may be;

[\(e\)](#)the use of a registered trade mark, being one of two or more trade marks registered under this Act which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration under this Act.

[\(3\)](#)Where the goods bearing a registered trade mark are lawfully acquired by a person, the sale of the goods in the market or otherwise dealing in those goods by that person or by a person claiming under or through him is not infringement of a trade by reason only of—

(a) the registered trade mark having been assigned by the registered proprietor to some other person, after the acquisition of those goods; or

(b) the goods having been put on the market under the registered trade mark by the proprietor or with his consent.

(4) Sub-section (3) shall not apply where there exists legitimate reasons for the proprietor to oppose further dealings in the goods in particular, where the condition of the goods, has been changed or impaired after they have been put on the market.”

71. Since the defendant's product contains both 'glucose' and 'Vitamin D' and seems to be an honest descriptive use of the main ingredient of the product, it cannot be said to infringe the registered trademark of the plaintiff. The term 'glucose' being the key ingredient of the product serves merely as a descriptive indication of its nature and composition.

72. In **Lotus Herbals (P) Ltd. v. DPKA Universal Consumer Ventures (P) Ltd., 2024 SCC OnLine Del 498**, decided on 25.01.2024, plaintiff claimed to be the proprietor of trademark 'lotus' and was seeking injunction against the use of the said trademark. Hon'ble Apex Court held there was no dispute over the fact that in defendant's product, one of the key ingredients in the face wash is 'lotus extract' which is underscored by the description on the bottle. The Hon'ble Court held that 'the indicator, in an indicative mark, may be one of the

words forming part of the mark, but so long as the word is a reasonably prominent part of the mark, its use may render the entire mark indicative.’ Lotus Splash in its entirety is inherently indicative of both the main aspect of the product and its characteristics as a face wash. Thus, the court ruled that defendant had not infringed plaintiff’s mark ‘Lotus’. Similarly, in the case at hand, this court is of the view that defendant’s use of the term ‘glucose’ and ‘vitamin-D/C’ is purely descriptive of the essential ingredient and characteristic of the product. Relevant paras of Lotus Herbals (supra) are reproduced hereinafter:

“69. There are two important expressions used in this clause. The first is “indicates”. The second is “or other characteristics of goods or services”. These are two expressions which are compendious in their import and scope, unlike the other expressions to be found in the clause, which are precise.

70. The word “indicate” is not a term of art. It is a word of ordinary English usage. In P. Ramanatha Aiyar’s Law Lexicon, “indicate” is defined as “to point out”. Anything which is, therefore, a pointer to a particular aspect of goods or services, is indicative of that aspect. If a registered trade mark is, therefore, used by someone in such a manner that its use indicates the kind, quality, quantity, intended purpose, value, geographical origin, time of production of goods or of rendering of services or other characteristics of the goods, Section 30(2)(a) is directly attracted.

.....
72. Expressed in a somewhat less radical fashion, a defendant cannot be restrained, in pleading its Section 30(2)(a) defence, by the “competitor’s need” or “degree of imagination” tests, helpful though they may be. It is always open to a defendant to contend that the impugned mark is “indicative” of one or more of the features envisaged in Section 30(2)(a) and is not, therefore, infringing in nature, and such a defence, is raised, has to be adjudicated by examining

the mark vis-à-vis the goods or services in respect of which it is used by the defendant.”

73. Similarly, in **Yatra Online v. Mach Conferences and Events, 2025 DHC 7167**, decided on 22.08.2025, Delhi High Court ruled against Yatra Online (plaintiff), holding that the disputed ‘Yatra’ mark was both generic and descriptive and, more importantly, carried a disclaimer that expressly denied the Plaintiff any exclusive rights over the word ‘Yatra’. Although it is not the attempt of this Court to state that ‘Glucon’ is a generic term, but it is of definite view that ‘glucose’ and ‘vitamin-D’ are generic words, common to the trade and indicative of essential ingredients of the product. Consequently, the use of the terms ‘glucose’ and ‘Vitamin D’, which together form the defendant’s product ‘Glucose-D’, constitutes a descriptive reference of product’s composition. Therefore, such use cannot grant plaintiff any exclusive proprietary right, and in the interim it cannot constitute trademark infringement. In this regard, reliance is place upon **Panacea Biotech Ltd. V. Recon Ltd, 1996 SCC OnLine Del 508**, relevant para is as under:

“10. Having regard to the aforesaid decisions I am of the opinion that where a party uses a descriptive and generic term for its trade mark it cannot be given sole right to use the same

to the exclusion of other traders. Commonly used words in trade and descriptive of the nature or colour or laudatory of the quality of the goods cannot be permitted to be monopolised. Similarly, in the case of a medicine, if a manufacturer uses the name of the basic drug of which it is constituted, no monopoly can be claimed by him in regard to the use of the same as his trade mark.”

74. The Defendant has shown that multiple traders such as Dabur, Rasna, and others have long used similar terms and packaging for identical glucose-based products. This establishes that the word ‘Glucose-D’ and its variants are common to the trade, reducing the Plaintiff’s claim. As held in **Corn Products Refining Co. v. Shangrila Food Products Ltd., AIR 1960 SC 142**, where a common element is widely used in the market, consumers learn to distinguish products by their other distinctive features, not by the shared element. Relevant para is as under:

“**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 use”

75. Scope of protection must also be considered in light of the Plaintiff’s own disclaimers and admissions before the

Registrar, acknowledging that 'Gluco' and 'Glucose' are descriptive and common to trade. Plaintiff had submitted before the Registrar that since the product is a glucose based product 'Gluco' is common to trade for glucose-based product and this admission was duly recorded by the Assistant Registrar of Trade Marks in his order dated 03.03.1978.

76. High Court of **Delhi in Wow Momo Foods P. Ltd. V. Wow Burger, 2025 DHC 8044** has observed that while examining the matter at a prima facie interlocutory stage, any admission made by either party which is destructive to the case that it seeks to canvass has to be taken into consideration by court while passing orders under Order XXXIX Rules 1 and 2 CPC. At prima facie stage admission would operate against the party making it. Therefore, by not placing its own stand in front of registrar, plaintiff disentitled itself from grant of discretionary relief under Order XXXIX Rules 1 and 2.

In this regard, reliance is placed upon judgment of High Court of Bombay at Goa in **Phonepe P Ltd. Vs Resilent Innovations, 2023 SCC OnLine Bom 764**, relevant part of the judgment is as under:

“31. Having taken such a stand, it was a factor relevant to the controversy in the present case, for the reason that the trademark of the defendant is 'postpe'. This Court is of the

opinion that by not placing its own stand taken before the Registrar of Trademarks in respect of cited marks like '*Phone Pe Deal*', '*Phone Pe Store*', '*Phone Pe Crore*', etc., the plaintiff dis-entitled itself to grant of discretionary reliefs under Order XXXIX, Rules 1 and 2 of the CPC. The test in such cases is that if the defendant is likely to suffer prejudice due to such suppression on the part of the plaintiff, discretionary relief ought not to be granted. In the present case, this Court is of the opinion that prejudice was certainly caused to the defendant, but for the defendant itself making enquiries and bringing the material before this Court as regards the stand taken by the plaintiff in the proceedings before the Registrar of Trademarks. When the plaintiff had claimed before the Registrar of Trademarks that its mark 'PhonePe', taken as a whole, cannot be said to be the similar to marks like '*Phone Pe Deal*', '*Phone Pe Store*', '*Phone Pe Crore*' etc., it was clearly relevant for the stand taken in the present case that the mark of the defendant 'postpe', taken as a whole, can be said to be deceptively similar to the registered trademark of the plaintiff 'PhonePe', taken as a whole."

77. Reliance is also placed upon **Wow Momo Foods P. Ltd. V. Wow Burger, 2025 DHC 8044** decided on 12.09.2025, relevant paras is as under:

"10.4. The other crucial aspect which requires attention of this Court and is worth noting is that Registrar of Trade Marks while granting registration to Plaintiff's device marks¹¹ i.e., 'WOW! MOMO' (Device/Class 30), 'WOW! MOMO' (Device/Class 43), 'WOW! THUNDERZZ' (Device/Class 32), 'WOW! CHINA' (Device/Class 30), 'WOW! CHINESE', (Device/Class 32), has given a disclaimer against the exclusive use of the words forming part of the composite marks of the Plaintiff. In the opinion of this Court, these disclaimers were appropriate as the words in question individually are common English words in the trade of hospitality industry and therefore, cannot be appropriate by a single trader.

10.5. A perusal of the record and especially the documents qua TM Application No. 5321648 for 'WOW CHINA' and 5412950 for 'WOW! CHINESE', shows that the Registrar of Trade Marks raised certain objections qua these trademark applications on the basis of objections received from third parties. The word WOW was also objected to. In reply(s) to

the said objections, the categorical stand taken by the Plaintiff was that the mark of the Plaintiff is formed by combination of an English Dictionary words 'WOW' and 'CHINA/CHINESE'. It is further stated in the said 11 TM Application Nos. 2014802, 2014803, 4665746, 5321648, 5412949. Signature Not Verified Signed By:HEMANT CS(COMM) 1161/2024 Page 15 of 30 PRATAP SINGH Signing Date:12.09.2025 21:46:34 replies that the said composite mark when considered as a whole makes it distinctive of the Plaintiff's goods and services.

10.6. The relevant part of the replies of the Plaintiff dated 27.03.2022 and 20.07.2022 to the objections of the Registrar of Trade Marks as mentioned above reads as under: 27.03.2022: "The objection raised under Section 9(1)(a) is not maintainable as the applicants submit that their mark is formed by a combination of an English dictionary word WOW suffixed with CHINA, followed by a tagline DESI CHINESE." 20.07.2022: "The Applicant submits that the objection raised under Section 9(1)(a) is not maintainable as the applicants submit that their mark is formed by a combination of an English dictionary word WOW suffixed with CHINESE." (Emphasis supplied) Thus, the Plaintiff on its own showing admitted before the Registrar of Trade Marks that the word 'WOW' alone being an English Dictionary word is not distinctive and it is in a combination with another word that it would as a composite mark have a distinctive character. In view of this stand, Plaintiff cannot contend in these proceedings that the word WOW on a standalone basis is a distinctive mark.

10.7. The binding effect of admissions made before the Registrar of Trademarks, at this prima facie interim stage was dealt by this Court in Institute of Directors (supra). The relevant paragraph reads as under:

"18. This Court is presently examining the matter at a prima facie interlocutory stage, under Order XXXIX Rules 1 and 2 of the CPC. Any admission made by either party, which is destructive of the case that it seeks to canvass has, therefore, to be taken into consideration by the Court while passing orders under Order XXXIX Rules 1 and 2. It would be open to the party, during trial, to seek to escape the said admission. However, at a prima facie stage, the admission would operate against the party making it.

19. I see no real escape for the plaintiff, from the representation made by it before the Trademarks Registry in its reply dated 8 December 2014 to the FER raised by the Registry, extracted in para 9 supra. It is specifically stated, by the plaintiff, in the said

paragraph, that "words used in the mark are common English language words and are descriptive in nature and cannot belong to any one proprietor". In one breath, the plaintiff, thereby, admits the textual component of its device mark both to be descriptive as well as to be lacking in distinctive character, by stating that the textual component of the mark constituted of common English words which could not belong to any one proprietor." (Emphasis supplied)

10.8. So also, in this regard a Co-ordinate bench of this Court, in Yatra (supra) observed that disclaimers are placed so that the proprietor of the registered mark does not try to expand the right beyond their legitimate bounds or claim special advantages in the disclaimed portions. The relevant portion reads as under:

"57. The disclaimers are placed so that the proprietor of the registered mark does not try to expand the right beyond their legitimate bounds or claim special advantages in the disclaimed portions." (Emphasis supplied)

10.9. In view of the admissions of the Plaintiff before the Registrar of Trademark to the above effect, the Plaintiff cannot be allowed to approbate and reprobate and claim 'WOW' as its distinctive/dominant mark. Thus, in light of the said facts as well, the Plaintiff will not be entitled to claim exclusivity over the word 'WOW' stating that the same is distinctive feature of its trademark."

78. High Court at Calcutta in **Heinz Italia S.L.R & Anr.**

V. Dabur India Limited & Others, CS No. 138 of 2003 decided on 20.02.2008, (affirmed by Principal Division Bench) held that green cardboard and photographs of happy family have been used by many manufacturers other than plaintiff. It was held in this case that exclusivity by plaintiff can only be claimed over the word 'Glucon', the plaintiff is restricted to claim rights over 'D'. Relevant para is as under:

“What the defendants have been able to establish is that there are many manufacturers of the same product primarily containing dextrose monohydrate that have been and are sold in green cardboard or like boxes. What the defendants have further been able to show is that the photographs of the family on such packets have been used by manufacturers other than the plaintiffs. The plaintiffs’ word mark, to the extent the plaintiffs can claim exclusivity over it, is restricted to the word “Glucon”. The plaintiffs cannot claim exclusive rights over the “D” used as part of its product name as the same may refer to vitamin-D contained in the plaintiffs’ product. In any event, the defendants have asserted that their product contains vitamin-D and the brand name used by the defendants is descriptive of the product and the vitamin ingredient therein.

.....

It would not be such an open and shut case for the plaintiffs, if the photograph was of similar import on the defendants’ packet but the background was altogether different. Conversely, if the most prominent feature of the plaintiffs’ distinctive packet, that of the smiling family, were not used by the defendants, the mere identity of the background colour even upto the verisimilitude of hues, may not entitle the plaintiffs to an order of injunction. The test is one of impression, impression not by comparison but by the recall value: whether a would-be customer would recall the plaintiff’s and reach out for the defendant’s product on his inattentive association of the one for the other. Just as the goodwill of the plaintiff, at least at the interlocutory stage, is to be protected both under the statute and at common law, the registration or extensive use cannot be a ticket to a monopoly over the product. The plaintiffs here can claim no rights over the colour green used in its packets, whether or not such colour has become generic to similar products.”

79. This Court would go on to state that words which are part of ordinary parlance, fall in category of non-distinctive or descriptive marks, incapable of exclusive use by one single individual/ entity. Further, words of ordinary English usage also cannot be monopolized. In this context, this Court observes that under the garb of Section 30(2)(a), even if such a word is

registered, third parties are entitled to use it honestly and descriptively to indicate the nature, quality, or other characteristics of their goods or services. Accordingly, the word in question cannot be said to infringe the registered trademark of the plaintiff, rather, as already observed, it functions merely as descriptive. Therefore, in the opinion of this Court, the Plaintiff cannot assert exclusive rights over the expression 'Glucose-D/C', as it falls squarely within statutory exceptions under 9(1)(a) to trademark protection and hence, it cannot be treated as distinctive/dominant mark of the plaintiff.

80. Further, the words 'ROCK-ON in capital letters have been prominently written on the packing, highlighted in red. As per settled law, trade dress or rather the whole thing must be seen in its entirety and not parts in isolation. Even though the packaging is a carton box in color green, the product if seen as a whole, prima facie causes no confusion. Therefore, in my view, there was no intention on the part of defendant to play fraud by misrepresenting his goods as the goods of the plaintiff.

81. It can be inferred from the anti-dissection rule that the approach of isolating individual parts of a composite mark does

not reflect how an average consumer looks at a trademark. Consumers view a mark as a whole, rather than dissecting it. In **Pernod Ricard India Pvt. Ltd. v. Frost Falcon Distilleries Ltd., Civil Appeal No. 10638 of 2025**, decided on 14.08.2025, the Hon'ble Delhi High Court, as noticed above, reaffirmed that, while assessing deceptive similarity, the Court must adopt a holistic comparison while examining the visual, phonetic, structural, and conceptual aspects of the marks to see if the overall impression is likely to mislead or confuse an average consumer of ordinary intelligence and imperfect recollection. Applying the aforesaid principle to the facts of the present case, this Court is of the view that the products of both the parties must be compared as wholes, in accordance with the anti-dissection rule. It thus appears to me that overall impression created by the defendant's mark does not amount to infringement. The resemblance, if any, arises from the use of a descriptive and common trade word rather than from any imitation.

82. Afore factors, if taken into consideration, weakens the case for grant of injunction at this stage.

83. With regard to judgment of Hon'ble Supreme Court in **Heinz Italia v. Dabur**, 2007(6) SCC 1, this Court is of the view that the order of the Supreme Court may not be of any help inasmuch as grant of order of injunction to restrain the first respondent from using the word 'Glucose-D' as the concluding portion of the order makes it clear that the Trial Court would not be bound by any observation since it pertained to grant of ad-interim injunction. Relevant portion of the judgment is as under:

“20. We accordingly set aside the order of the trial court dated 11-12-2003 and the order of the High Court dated 27-10-2005. However, as this order is confined only to the limited question of an ad interim injunction, any observation made in this order would not bind the trial Judge in the proceedings in the suit. The application for ad interim injunction is accordingly allowed in terms of prayer clause (ii) of the application.”

84. Moreover, defendant's products have been in the market for over a decade, and the current packaging has been in use for more than four years. Plaintiff despite issuing a notice in April 2023, instituted the present suit in September 2024. Additionally, an injunction at this stage would disrupt the defendant's ongoing business. Plaintiff's injury, if any, can be adequately compensated through damages. On the other hand, an injunction would cause disproportionate harm to the Defendant, especially where the impugned terms are descriptive and

commonly used. High Court of **Bombay in Kopran Chemical Co. Ltd. V. Sigma Laboratories, 1993 SCC OnLine Bom 461** has held as under:

“8. The Defehdants have been selling since 1987. Grave prejudice would be caused to them, if an injunction is issued at this stage. On the other hand the Plaintiffs can be adequately protected by the following Order.

9. Lastly though not conclusive by itself, in my view, it is relevant that in all these years the Plaintiffs have not been able to show actual confusion or deception. I hasten to add that this does not mean that Plaintiffs must show actual confusion or deception. I only say that where both products have been in use for a number of years simultaneously Courts can consider relevant, the fact that there are no instances of actual confusion or deception.”

85. Similarly, in **Parle Products v. JP & Co., (1972) 1 SCC 618** Hon'ble Apex Court had held that in cases where no injunction is granted and the suit is ultimately decreed, the loss suffered by plaintiff can be ascertained and he can be adequately compensated, but in case where injunction is granted, loss ascertained by defendant cannot be calculated.

86. Moreover, defendant is selling the product under its own registered mark, 'Rock-On', which is displayed on the packaging. The presence of the distinctive mark, even if smaller than the product name, is a sufficient to prevent consumer from confusion regarding the source.

87. In my opinion, if the defendant is not enjoined at this stage, irreparable injury would not be caused to the plaintiff, rather irreparable loss would be caused to the defendant which cannot be compensated in any term. In view of the above discussion, this Court is of the opinion that the Plaintiff has not established a prima facie case for grant of interim injunction. Respondents are however directed to maintain accounts in respect of sale of the products and to furnish copy of such accounts to the plaintiff. Accordingly, the application under Order XXXIX Rules 1 and 2 CPC is dismissed.

88. Any observation made herein above shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of the present application alone.

**(Sandeep Sharma),
Judge**

November 11, 2025
(vikrant)