

FAO-COM-17-2025 (O&M)

Radico Khaitan Ltd.

Vs.

Picadilly Agro Industries Ltd.

Present: Mr. Mukul Rohatgi, Senior Advocate, (through VC) with
Mr. Akshay Bhan, Senior Advocate,
Ms. V. Lakshmi Kumaran, Advocate,
Mr. Prashant Philips, Advocate,
Mr. Veerdhya Singh, Advocate,
Mr. Ritwik Sharma, Advocate,
Mr. Harsh Gupta, Advocate,
Mr. Gurpreet Singh Kahlon, Advocate and
Mr. Dyal Singh Garcha, Advocate for the appellant.

Mr. Puneet Bali, Senior Advocate, assisted by
Mr. Siddharth, Advocate,
Mr. Ajay Sahni, Advocate,
Mr. Abhirath Prashar, Advocate
Mr. Jasman Singh Gill, Advocate,
Mr. Arvind Sandhu, Advocate,
Mr. Amandeep Singh, Advocate,
Mr. Saurabh Khosla, Advocate for the respondent.

CM-48-FACOM-2025

Application for grant of exemption from filing typed/certified copies
of orders, is allowed subject to all just exceptions.

CM-49-FACOM-2025 in/and **FAO-COM-17-2025**

1. This misc. appeal arises out of an order of injunction passed by the Court below dated 23.09.2025, under Order 39 Rules 1 and 2 of the Code of Civil Procedure, in a Commercial Trademark Suit No.CS-08-2025, whereby the defendant-appellant altogether with its subsidiaries and agents etc. have been enjoined from manufacturing, selling, offering for sale, marking '*Kashmyr*' in isolation and/or in conjunction with any other prefix/suffix and/or any other mark, name, label, device that is deceptively similar/infringing the plaintiff/respondent trademark '*Cashmir*' - '*Cashmere*' or any other variants. The defendant-appellant

has also been restrained from using the mark 'Kashmyr' in any manner and/or passing of the mark 'Kashmyr' as the plaintiff-respondent's trade mark 'Cashmir' and/or 'Cashmere', during the pendency of the Commercial Trade Mark Suit.

2. Plaintiff/respondent is a private limited company which is engaged in production and distribution of malt spirits. Its portfolio includes single malt whiskeys and a variety of Indian Made Foreign Liquor (IMFL) brands. It is a part of 'Piccadilly Group of Companies' which originally started in the year 1967. In 2015, the plaintiff-respondent's conceived the trade mark "Cashmere" and thereafter, filed applications for registration of the same before the Trade Marks Registry for launching premium vodka under the said brand name. Consequently, plaintiff-respondent became the registered proprietor of trade mark 'Cashmere'. Plaintiff has also filed trade mark application for the mark 'Cashmir' which is pending. According to the plaintiff-respondent, it was able to procure a fistful of the original Indian heritage winter wheat called 'Sona Moti'. The variety of this wheat has gone extinct. The plaintiff-respondent claims to have cultivated and scaled this one fist of grain into a few acres since 2019. By the year 2025, the plaintiff-respondent had sufficient crop to distil a small batch of vodka. On 23.05.2025, the plaintiff-respondent officially launched vodka under the trade mark 'Cashmir'. Plaintiff-respondent informed the BSE about the official launch of its vodka under the trade mark 'Cashmir'.

3. Plaintiff-respondent has asserted in the plaint that the defendant-appellant has applied for rectification challenging its registration of trade mark 'Cashmere' and filed multiple trade mark applications for the mark 'Kashmyr'. According to it, adoption of phonetically identical mark by the defendant-appellant is with a dishonest and mala fide intent. It is likely to create confusion and the consumer with imperfect recollection is bound to be misled.

4. Plaintiff-respondent claims to have learnt that the defendant-appellant applied for label registration under the name 'Kashmyr' for vodka product with the Uttar Pradesh Excise Department. Plaintiff-respondent requested the Excise Commissioner, Uttar Pardesh, to cancel/revoke the approval granted to defendant-appellant for brand 'Kashmyr'. In para No.18 of the plaint, it is asserted that the defendant-appellant has launched its product under the impugned mark 'Kashmyr' on 28.07.2025. Various publications were also launched in July, 2025, for said purposes. Accordingly, injunction has been claimed in the instant trade mark suit.

5. The defendant-appellant has filed its objections to the prayer for grant of injunction along with an application for rejection of the plaint under Order 7 Rule 11 CPC. According to the defendant-appellant, it is a reputed company engaged in manufacture and sale of liquor and has launched the product in the name of 'The Spirit of **KASHMYR**' prior in point of time. It is the defendant-appellant's case that no part of cause of action has arisen before the Court concerned for filing the Commercial Trade Mark Suit inasmuch as the defendant-appellant is neither manufacturing nor bottling its products in the State of Haryana nor has it any liquor license to sell its products in the State of Haryana. It is also the case of the defendant-appellant that liquor otherwise cannot be sold online and, therefore, in the absence of any evidence of sale of its product in Karnal or anywhere else in the State of Haryana, the instant trade mark suit itself is not maintainable at Karnal. It is further contended that the registration of Trade Mark 'Cashmere' in favour of the plaintiff-respondent in the year 2015, is not followed by any launch of product and since 'Cashmir' otherwise is not a registered trade mark, the plaintiff-respondent has no right to claim injunction in respect of the product launched by the defendant-appellant in the name of 'The Spirit of **KASHMYR**'. Per the trial Court has granted injunction in favour of the plaintiff-

respondent by the order impugned. Thus, aggrieved by the order impugned, the defendant-appellant is before this Court in the present commercial appeal.

6. On behalf of the appellant, it is submitted that the suit itself is not maintainable at Karnal and despite a specific objection raised in this regard, the trial Court has erroneously proceeded to grant injunction without advertng to the aspect of accrual of cause, within the Courts territorial jurisdiction, on the ground that this question would be decided at the time of disposal of pending application under Order 7 Rule 11 CPC. The defendant-appellant also contend that its claim of prior launch and use of its mark has not been appropriately considered. It is also submitted that the trial Court has erred in presuming 'Kashmyr' or 'Cashmir' to be a registered trade mark in favour of the plaintiff-respondent which is at variance with the material available on record. It is further urged that the facts placed on record by the defendant-appellant have completely been omitted from consideration. Moreover, it is argued that the plaintiff-respondent has no goodwill or reputation in its mark nor is it a prior user and, therefore, the grant of injunction in favour of the plaintiff-respondent is unsustainable. It is also the case of the defendant-appellant that the plaintiff-respondent amassed large number of marks without intention to use them which shows that the plaintiff-respondent is deriving unfair advantage by getting the marks registered in its favour without using it for decades together. The defendant-appellant also contends that the blanket injunction granted against it, is contrary to the settled principles of law and requires consideration.

7. The plaintiff-respdnent on the other hand, submit that having prior registration of mark 'Cashmere', it is entitled to the grant of injunction in view of the settled principles of law and correct appreciation of the facts of this case.

7. We have heard Mr. Mukul Rohatgi, Senior Advocate, Mr. Akshay Bhan, Sr. Advocate for the appellant-defendant and Mr. Puneet Bali, Senior Advocate for the respondent-plaintiff and have perused the materials on record.

8. Having heard counsel for the parties, we find that the following triable issues arise for consideration in this appeal:-

(i) Whether any cause of action has arisen to plaintiff-respondent within the territorial limits of Court at Karnal to institute the trade mark suit and seek injunction against the defendant-appellant when the defendant-appellant has no license to sell liquor in the State of Haryana; it has no manufacturing unit in Haryana and liquor otherwise cannot be sold online?

(ii) Whether the plaintiff-respondent is entitled to injunction in the Commercial Trade Mark suit when its registered trade mark is 'Cashmere' whereas the product sold by the defendant-appellant is in the name of 'The Spirit of **KASHMYR**' and the bottles and labels of the two products are allegedly distinct?

(iii) Whether injunction in the nature of passing of order impugned could be granted in favour of the plaintiff-respondent when the plea of prior user of mark by the plaintiff-respondent is questionable?

(iv) Whether injunction in the nature allowed by the trial Court is warranted or the interest of plaintiff-respondent could have been protected by other measures?

9. Matter requires consideration.

10. As the respondent-plaintiff has entered appearance, therefore, issuance of formal notice is dispensed with.

11. Mr. Bali, learned Senior Counsel for the plaintiff-respondent prays for and is allowed four weeks' time to file reply in the matter.

12. Defendant-appellant, if so required, may file rejoinder, within ten days.

13. Adjourned to 13.11.2025.

14. Till the next date, the effect and operation of the order dated 23.09.2025, shall be kept in abeyance. The defendant-appellant, however, shall maintain separate statement of accounts in respect of manufacture and sale of offending liquor/product and submit it before the trial Court on a fortnightly basis, for appropriate determination of cause at the stage of final disposal of this appeal.

(Ashwani Kumar Mishra)
Judge

(Rohit Kapoor)
Judge

09.10.2025
rajesh