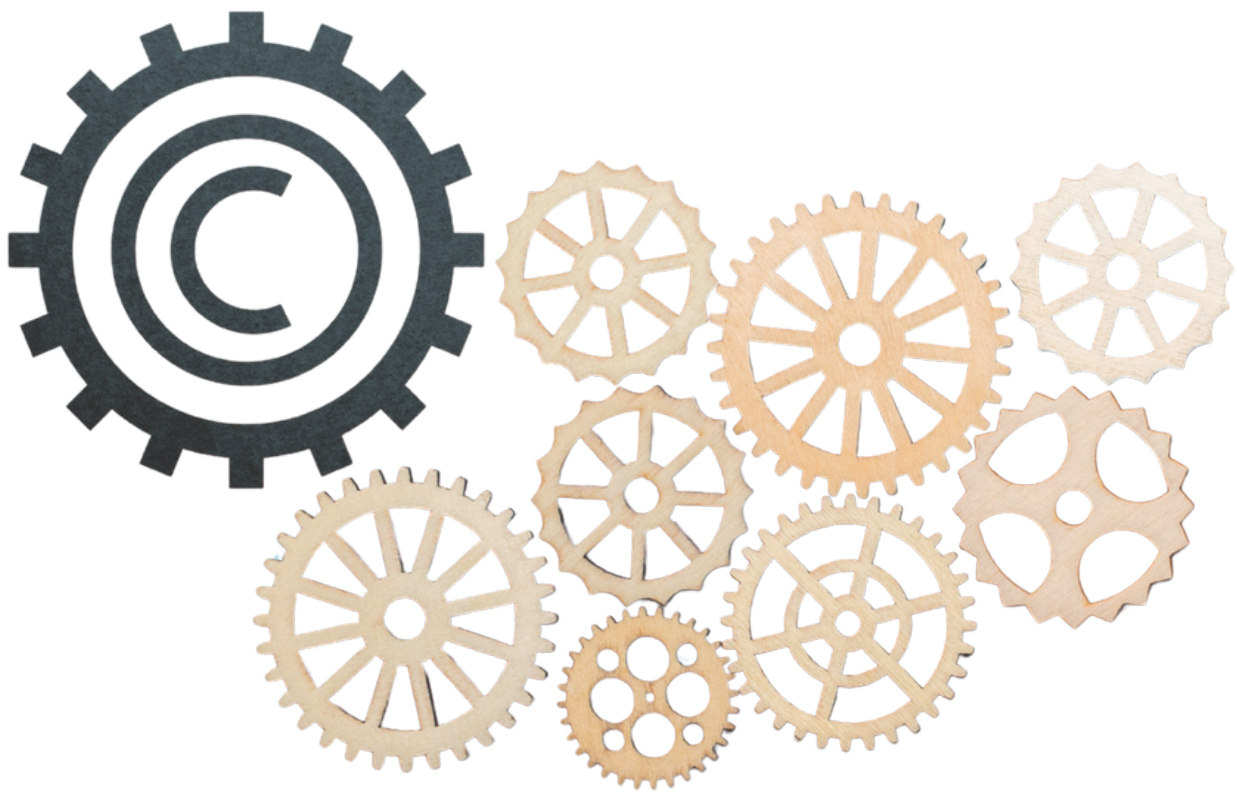


Intellectual Property Rights



NEWSLETTER
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Indian Copyright Office Rejects DABUS Authorship Claim, Holds AI System Cannot Be Recognised as Author

Summary

The Registrar of Copyrights rejected an application filed by Dr. Stephen L. Thaler for registration of the work titled “A Recent Entrance to Paradise”, in which DABUS (Device for the Autonomous Bootstrapping of Unified Sentience) was identified as the author. While the Registrar accepted that the AI-generated artwork satisfied the limited threshold of originality under Section 13 of the Copyright Act, 1957, it held that DABUS could not be recognised as the statutory author under Section 2(d)(vi).

Facts of the Case

Dr. Stephen L. Thaler applied under Section 45 of the Copyright Act for registration of the artistic work “A Recent Entrance to Paradise”, stating that it was first published in the USA in 2016 and identifying DABUS as its author.

According to the Applicant, DABUS was an AI system conceived, created and developed by Dr. Thaler. The system comprised interconnected neural networks and autonomously generated the artwork through processes involving training, association formation, perturbation, monitoring, stabilisation and output generation, without real-time human intervention or a text prompt. Dr. Thaler had, however, designed and configured the system and supplied and curated the visual and linguistic inputs.

The Copyright Office raised objections concerning originality, authorship, first ownership and the legal status of DABUS. Despite being given an opportunity during the hearing to amend the application and identify Dr. Thaler as the author, the Applicant declined and continued to maintain DABUS as the author.

Issue before the Registrar

The principal questions before the Registrar were:

1. Whether the AI-generated artwork satisfied the originality requirement under Section 13 of the Act;
2. Who was “the person who causes the work to be created” under Section 2(d)(vi) of the Act;
3. Whether Dr. Thaler could claim first ownership under Sections 17-19 of the Act, while DABUS was identified as the author; and
4. Whether DABUS could be recorded merely as the technological system through which the work was generated.

Findings of the Registrar

The Registrar first held that the artwork satisfied the threshold of originality under Section 13 of the Act. Applying *Eastern Book Company vs. D.B. Modak*, the Registrar observed that copyright does not require novelty or inventive ingenuity, but the work must contain at least a minimal degree of non-trivial creativity and must not be copied, commonplace or mechanically predetermined. The fact that technology was indispensable to producing the work did not, by itself, render the output unoriginal.

On authorship, however, the Registrar drew a distinction between the technological mechanism generating the output and the person to whom authorship is legally attributed. Section 2(d)(vi) specifically identifies the author of a computer-generated work as “the person who causes the work to be created”. It does not confer authorship upon the computer or AI system producing the immediate output.

Applying this test to the facts, the Registrar held that Dr. Thaler had conceived and created DABUS, configured its operation, supplied and curated the inputs, provided textual descriptions and initiated the process that resulted in the particular artwork. Accordingly, notwithstanding DABUS’s autonomous generation of the final visual output, Dr. Thaler was the person who caused the work to be created within the meaning of Section 2(d)(vi) of the Act.

The Registrar rejected the distinction sought to be drawn between an “upstream cause” and an “immediate cause”. Autonomy in execution, it was held, is not synonymous with conception of the work.

The Registrar further held that DABUS was neither a natural nor a juristic person recognised by law, and possessed no independent legal capacity to own property, enforce rights, assign copyright or bear legal obligations. Recognising it as an author would effectively create a new category of technological juristic person, which could not be achieved through administrative interpretation.

Held

The Applicant’s claim that DABUS be treated as the author while Dr. Thaler be recognised as owner was held to be inconsistent with Sections 17-19 of the Act. Since the author is ordinarily the first owner under Section 17 of the Act, a different ownership arrangement requires a statutory exception or valid transfer in accordance with Sections 18 and 19 of the Act. DABUS, being incapable of holding or assigning copyright, could not provide the necessary chain of title.

The Registrar clarified that this did not mean that Dr. Thaler could never be the first owner. Rather, on the facts disclosed, the defect was that the application continued to identify DABUS as author and Dr. Thaler as owner, despite the Registrar finding Dr. Thaler to be the statutory author.

The application was therefore rejected, since the Applicant, despite being afforded an opportunity to correct the authorship particulars, deliberately maintained its claim of DABUS authorship. The Registrar expressly left open the possibility of a fresh or appropriately formulated request concerning DABUS merely as the technological system used to generate the work, without attributing legal authorship to it.

Conclusion

The decision draws an important distinction between AI-generated expression and AI authorship. An AI-generated work may satisfy the originality requirement under Section 13 of the Act, but the AI system itself cannot presently be treated as the statutory author under Section 2(d)(vi) of the Act. The controlling enquiry remains who, as a legally recognised person, caused the work to be created, with the Registrar holding that legislative intervention, rather than administrative interpretation, would be required to confer authorship or legal personality upon autonomous AI systems.

Delhi High Court Permits Amendment of Passing Off Suit to Incorporate Infringement Claim Following Subsequent Trademark Registration

Summary

In *M/s KRBL Limited v. M/s J.R. Rice India Pvt. Ltd. & Anr.*, CS(COMM) 701/2016, the Delhi High Court allowed the Plaintiff’s application under Order VI Rule 17 CPC to amend its plaint to incorporate a claim for trademark infringement after the Plaintiff acquired rights in the registered ‘INDIA GATE’ trademark during the pendency of the suit, following which the mark was registered in the Plaintiff’s favour and declared a well-known trademark. The Court held that such amendment did not alter the basic nature or character of the suit, as the claims of passing off and infringement arose from substantially the same set of facts. The Court emphasised that subsequent events can be taken into account to ensure complete adjudication and avoid multiplicity of proceedings. While allowing the amendment despite the delay, the Court imposed costs of ₹50,000/- on the Plaintiff.

Facts of the Case

KRBL Limited instituted the suit seeking, inter alia, a permanent injunction restraining the Defendants from using the impugned ‘ROYAL GATE’ trademark/label incorporating the ‘INDIA GATE’ device, or any deceptively similar mark,

on the ground of passing off. At the time of institution of the suit, the Plaintiff's 'INDIA GATE' mark was not registered in its favour and, consequently, the suit was predicated on the common law remedy of passing off.

During the pendency of the proceedings, the Plaintiff acquired rights in the registered 'INDIA GATE' trademark from Mr. Ram Pratap under an Assignment Deed dated 06.08.2019. The mark was subsequently registered in the Plaintiff's favour, and the 'INDIA GATE' mark was also included in the list of well-known trademarks under the Trade Marks Act, 1999. The Plaintiff accordingly sought to amend the plaint to place these subsequent developments on record and incorporate a consequential claim for infringement.

The Defendants opposed the amendment, contending that it would change the entire complexion of the suit, which had originally been confined to passing off. They also argued that the application was filed after a substantial delay and after the suit had proceeded to trial.

Issue before the Court

Whether a Plaintiff, whose trademark was unregistered at the time of institution of a passing off suit but subsequently becomes registered during the pendency of the proceedings, can amend the plaint to incorporate a claim for trademark infringement, particularly after commencement of trial and after a considerable delay.

Findings of the Court

The Court observed that the power to permit amendment of pleadings under Order VI Rule 17 CPC is wide and is intended to enable the Court to determine the real controversy between the parties. While amendments should not be permitted where they fundamentally alter the nature and character of the original proceedings or cause irreparable prejudice to the opposite party, a liberal approach is warranted where the amendment is necessary for complete adjudication and would avoid multiplicity of

litigation.

Relying upon *Rajesh Kumar Aggarwal v. K.K. Modi*, *Pravesh Narula Trading as M/s Capital Enterprises v. Raj Kumar Jain Trading as M/s Bholaram Puranmall & Anr.*, and other authorities, the Court reiterated that subsequent events occurring during the pendency of a suit may be taken into consideration, particularly where they give rise to a consequential or alternative relief arising from the same factual foundation. The Court noted that in a passing off action, the subsequent registration of the very trademark forming the subject matter of the suit does not introduce an entirely new dispute.

The Court specifically relied upon the principle that the causes of action for passing-off and infringement are founded on substantially similar facts, and that permitting an amendment to introduce an infringement claim following registration of the mark does not change the basic structure of the suit. Refusing such an amendment would instead compel the Plaintiff to institute a separate infringement action, resulting in unnecessary multiplicity of proceedings.

The Court also considered the fact that the amendment application had been filed after commencement of trial. It reiterated that the power to permit amendment is not completely restricted after commencement of trial, provided the requirements governing amendment are satisfied. In particular, the Court emphasised that amendments which are bona fide, legitimate, necessary for determining the real controversy and which do not cause irreparable prejudice should ordinarily be allowed, rather than being rejected on a hyper-technical approach.

Applying these principles, the Court held that the proposed amendment did not change the nature or character of the suit, since the INDIA GATE mark was already the subject matter of the original proceedings and the amendment merely sought to incorporate the legal

consequences flowing from its subsequent registration. The Court further held that allowing the amendment was necessary in the interests of justice and to avoid multiplicity of proceedings.

Held

The Delhi High Court allowed the Plaintiff's application under Order VI Rule 17 CPC and took the amended plaint on record. The amendment was permitted to incorporate the subsequent registration and well-known status of the 'INDIA GATE' mark and the consequential claim for infringement.

However, considering the unexplained delay in filing the amendment application, the Court imposed costs of ₹50,000/-, payable to the Delhi High Court Advocates Welfare Trust within two weeks. The Court also permitted the Defendants to file their written statement to the amended plaint and permitted the parties to file additional evidence confined to the amendments.

Conclusion

The decision reinforces the principle that subsequent registration of a trademark during the pendency of a passing off action can be incorporated into the existing proceedings by way of amendment, where the underlying factual foundation remains substantially the same. The judgment highlights the Court's preference for a liberal and justice-oriented approach to amendments, particularly where refusal would compel the Plaintiff to institute parallel proceedings.

The decision is particularly relevant to trademark proprietors who institute passing off proceedings before registration of their marks and subsequently obtain registration during the pendency of the suit. It indicates that subsequent statutory rights may, subject to the principles governing amendment, including the absence of irremediable prejudice, be brought on record in the existing proceedings rather than requiring a fresh infringement action.

Delhi High Court Grants Ex Parte Injunction Against "RASANAND SCHEZWAN CHUTNEY" for Infringing Capital Foods' "SCHEZWAN CHUTNEY" Trademark

Summary

In Capital Foods Private Limited v. Patson Foods (India) Private Limited & Anr., CS(COMM) 936/2026, the Delhi High Court granted an ex-parte ad interim injunction restraining the Defendants from using "RASANAND SCHEZWAN CHUTNEY" or any mark containing "SCHEZWAN CHUTNEY" in relation to food products. The Court held that the Plaintiff had established a prima facie case of trademark infringement and passing off, particularly in view of its subsisting registration, more than a decade of continuous use and the substantial goodwill and reputation acquired by the mark.

Facts of the Case

Capital Foods Private Limited, engaged in the manufacture and sale of food products, adopted the trademark SCHEZWAN CHUTNEY in 2012 for its Schezwan sauce/dip products. The Plaintiff claimed that the mark was a rare, unique and distinctive combination of two words drawn from different languages and had, through continuous and extensive use, acquired secondary significance. The Plaintiff is the registered proprietor of the wordmark under Registration No. 2431851 in Class 30, dating back to 22 November 2012, and also holds copyright registration in the artistic work comprising its product packaging



The Plaintiff asserted substantial goodwill and reputation arising from extensive sales, advertising and promotional activities, and relied upon earlier decisions recognising

the secondary significance of the mark.

The Defendants, Patson Foods (India) Private Limited and another entity, were manufacturing and selling products under the mark "RASANAND SCHEZWAN CHUTNEY/



After receiving a legal notice in November 2025, Defendant No. 1 had undertaken to discontinue use of the mark and not use any identical

or deceptively similar mark in future. However, the Plaintiff subsequently discovered that the Defendants had resumed sale of the impugned products through their website. An investigator thereafter purchased the product online, which was delivered in Delhi on 31 July 2026 with an invoice issued by Defendant No.2.

Issue before the Court

Whether the Defendants' use of "SCHEZWAN CHUTNEY" as part of "RASANAND SCHEZWAN CHUTNEY" in relation to identical food products amounted to infringement of the Plaintiff's registered trademark and passing off, warranting an *ex-parte ad interim injunction*.

Findings of the Court

The Court found that the Plaintiff had established a prima facie case of infringement and passing off, with the balance of convenience in its favour and a likelihood of irreparable harm in the absence of an injunction. The Court noted that the Plaintiff had been using the mark continuously for more than a decade and had established formidable goodwill and reputation through substantial sales and promotional expenditure.

The Court held that the Defendants were using the identical registered trademark for identical goods. The addition of "RASANAND" did not sufficiently distinguish the competing products, particularly since "SCHEZWAN CHUTNEY" was prominently displayed while "Rasanand" appeared in a smaller font. Considering the common trade channels and consumer base, the Court found a likelihood of confusion amongst the public.

The Court also took note of the Defendants' prior acknowledgment of the Plaintiff's proprietary rights and their subsequent continuation of the impugned use. This conduct prima

facie indicated an intention to create an association with the Plaintiff and ride upon its goodwill and reputation.

Held

The Delhi High Court held that the Defendants were prima facie infringing the Plaintiff's registered trademark SCHEZWAN CHUTNEY and were also passing off their goods as those of, or associated with, the Plaintiff.

Accordingly, till the next date of hearing, the Defendants and all persons acting on their behalf were restrained from directly or indirectly selling, marketing or offering for sale the impugned products under 'RASANAND SCHEZWAN CHUTNEY' and/or any product bearing the mark 'SCHEZWAN CHUTNEY', or from using any other mark identical or deceptively similar to the Plaintiff's registered mark, amounting to infringement and/or passing off.

Conclusion

The decision illustrates that where a Defendant uses a registered trademark identically in relation to identical goods, the mere addition of its own mark may not be sufficient to distinguish the competing products, particularly where the competing marks are presented in a manner likely to cause confusion.

Delhi High Court Cancels Registration of "DAPLOGIN", Holding it Deceptively Similar to "DAPLO"

Summary

The Delhi High Court, in *Dr. Reddy's Laboratories Limited v. Razenta Pharmaceuticals Private Limited & Anr.*, allowed a cancellation petition filed by Dr. Reddy's Laboratories Limited and cancelled the registration of 'DAPLOGIN', holding it deceptively similar to the Petitioner's prior mark 'DAPLO' for pharmaceutical products.

Facts of the Case

The Petitioner had coined and adopted the trademark 'DAPLO', which had been

continuously used since 2020 for pharmaceutical products used in the treatment of "Type-2 Diabetes Mellitus". The mark was registered in Class 5.

The Respondent applied for registration of 'DAPLOGIN' under Registration No. 5208898 in Class 5 on a proposed-to-be-used basis on 14 November 2021. The mark was published in the Trade Marks Journal on 17 June 2024 and was subsequently placed on the Register on 1 November 2024.

The Respondent contended that 'DAPLOGIN' had been independently coined from Dapagliflozin and that 'DAP/DAPLO' was common to trade, relying upon various third-party registrations.

Issue before the Court

Whether the registration of 'DAPLOGIN' was liable to be cancelled on account of its deceptive similarity with the Petitioner's prior registered trademark 'DAPLO'.

Findings of the Court

The Court held that 'DAPLO' and 'DAPLOGIN' were deceptively similar. Applying the anti-dissection principle, the marks were required to be compared as a whole, from the perspective of a person of average intelligence and imperfect recollection. The Court noted that DAPLO was wholly subsumed within DAPLOGIN and that the addition of "GIN" was insufficient to distinguish the marks.

The Court also considered the principle of initial interest confusion, observing that a person familiar with DAPLO could, upon encountering DAPLOGIN for the same drug, perceive it as another variant originating from or associated with the Petitioner. The likelihood of confusion was enhanced since the rival products contained the same API, treated the same disease and shared common trade channels and consumer base.

The Court rejected the Respondent's argument

that DAPLO was *publici juris* merely because "DAP" was derived from Dapagliflozin. It held that DAPLO was a coined word with no dictionary meaning, formed by combining 'DAP' and 'LO', and was not the prefix, suffix, abbreviation or short name of Dapagliflozin. The fact that 'DAP' was derived from the API did not, by itself, render the composite mark DAPLO *publici juris*.

The "common to trade" defence was also rejected. The Court noted that, apart from the rival marks themselves, the Respondent had produced four other registrations incorporating DAP/DAPLO, but there was no evidence demonstrating their actual use in the market. Mere presence of marks on the Register could not establish that the mark was common to trade.

Held

The Court reiterated that pharmaceutical trademarks require exacting and stringent judicial scrutiny in view of the serious consequences that may arise from confusion between medicines. The fact that the competing medicines were prescription drugs was held insufficient to rule out the possibility of confusion.

Accordingly, the Court held that the registration of 'DAPLOGIN' fell foul of Sections 9(1)(a), 9(2)(a) and 11(1)(b) of the Trade Marks Act, 1999.

The registration of 'DAPLOGIN' under No. 5208898 was cancelled, and the Registrar of Trade Marks was directed to rectify the Register within six weeks.

Conclusion

The decision reiterates that incorporation of an earlier distinctive mark in its entirety, with a mere suffix added thereto, may constitute deceptive similarity, particularly where the competing marks are used for identical pharmaceutical products containing the same API and treating the same ailment.

Delhi High Court Grants Ex-Parte Injunction Protecting Parle Agro's 'SMOODH' Trademark Against 'SMOOTH' for Dairy-Based Yogurt Drinks

Summary

In *Parle Agro Private Limited v. Varun Beverages Limited & Anr.*, CS(COMM) 897/2026, the Delhi High Court granted an ex-parte ad interim injunction restraining the Defendants from using the mark SMOOTH /  or any deceptively similar mark in relation to dairy-based yogurt drinks, finding the mark prima facie nearly identical to the Plaintiff's registered SMOODH /  trademarks.

or any deceptively similar mark in relation to dairy-based yogurt drinks, finding the mark prima facie nearly identical to the Plaintiff's registered SMOODH /  trademarks.

The Court noted that the Defendants had substituted the letter 'D' with 'T', which it prima facie characterised as 'smart copying, while the rival products, trade channels and consumer base were common. The Court also found significance in the Defendants' packaging, where SMOOTH was displayed prominently while their own brand CALPIS appeared in a smaller font "



thereby increasing the likelihood of an association with the Plaintiff.

Facts of the Case

Parle Agro Private Limited, incorporated in 1985, is an Indian beverage company engaged in the manufacture, marketing and export of various beverages and food products under several brands. The Plaintiff adopted the trademark SMOODH in 2020 and launched dairy-based flavoured drinks under the mark in 2021, initially including Chocolate Milk and Toffee Caramel variants. Subsequently, owing to the popularity of the products, the Plaintiff expanded its range of dairy-based beverages under the SMOODH mark. The Plaintiff obtained registrations for SMOODH and its formative marks in Classes 29, 32 and 35. The Plaintiff claimed substantial goodwill and reputation arising from continuous use and extensive promotion of the

mark since 2021. The Plaintiff also relied upon widespread publicity, online and electronic coverage and celebrity endorsements.

On 24.07.2026, the Plaintiff came across an article concerning the Defendants' intended launch of a ready-to-drink, dairy-based yogurt product in India under the mark SMOOTH. The Defendants had announced the launch on 18.06.2026, and the Plaintiff approached the Court before the product was launched in the Indian market. The Plaintiff alleged that SMOOTH was phonetically, visually and structurally deceptively similar/nearly identical to SMOODH and was intended to exploit the goodwill associated with the Plaintiff's mark.

Issue before the Court

Whether the Defendants' proposed use of the mark SMOOTH for dairy-based yogurt drinks was prima facie likely to infringe the Plaintiff's registered SMOODH trademarks and amount to passing off, warranting an *ex-parte ad interim injunction*.

Findings of the Court

The Court, upon examining the rival marks and the Defendants' packaging, held that the Plaintiff had made out a prima facie case for grant of an ex-parte ad interim injunction. The balance of convenience was also found to lie in favour of the Plaintiff, with the Court observing that failure to grant interim protection was likely to cause irreparable harm.

The Court noted that, as the registered proprietor of the SMOODH marks, the Plaintiff was entitled to the statutory rights conferred under Section 28 of the Trade Marks Act, 1999, including the right to seek protection against unauthorised use of the registered marks. Against this statutory right, the Defendants had adopted SMOOTH, which was prima facie nearly identical/deceptively similar to SMOODH.

A significant factor was the manner of adoption. The Court observed that the Defendants had

“carefully and cautiously substituted the letter ‘D’ to ‘T’”, which was prima facie indicative of an attempt to come as close as possible to the Plaintiff’s mark. The Court further found that the commonality of the trade channels and consumer base created a strong likelihood of confusion.

The Court also considered the overall presentation of the Defendants’ product packaging. While the Defendants’ product was branded CALPIS, the word CALPIS was displayed in a smaller font, while SMOOTH was given greater prominence. The Court considered this packaging strategy relevant to the likelihood of consumers perceiving an association or commercial nexus with the Plaintiff’s SMOODH products.

The Plaintiff’s substantial sales, promotional expenditure, social media presence, celebrity endorsements and extensive publicity were found to reflect the goodwill and reputation acquired by the SMOODH marks within a relatively short period. The Court held that adoption of a near-identical mark for an identical product indicated an intention to encash upon the Plaintiff’s goodwill and reputation, thereby giving rise not only to infringement but also to a case of passing off.

Held

The Delhi High Court granted an ex-parte ad interim injunction restraining the Defendants, their proprietors, partners, directors, officers, distributors, dealers, agents and all persons acting on their behalf from using SMOOTH and/or any other trademark identical or deceptively similar to the Plaintiff’s registered SMOODH trademark and its formative marks.

“The Defendants were also restrained from using the impugned product packaging featuring SMOOTH prominently in a manner amounting to infringement of the Plaintiff’s registered trademarks and/or passing off. The injunction was directed to operate until the next date of hearing.

Conclusion

The decision demonstrates the Court’s willingness to grant immediate protection where a later entrant adopts a mark that is near-identical to an established trademark for identical goods, particularly where the competing marks are presented through common trade channels and to the same consumer base.

Importantly, the decision highlights that minor orthographic alterations will not necessarily distinguish a competing mark where the overall commercial impression remains deceptively similar. The Court’s observation that replacing “D” with “T” constituted “smart copying”, coupled with its consideration of the prominence given to the impugned mark on the packaging, underscores the importance of assessing the overall manner of adoption and presentation, and not merely undertaking a letter-by-letter comparison of competing marks.

Delhi High Court Upholds Injunction Against “NOVIETS” for Being Deceptively Similar to “NOVARTIS”

Summary

The Division Bench of the Delhi High Court, in *Noviets Pharma & Ors. v. Novartis AG & Ors.*, dismissed an appeal against an interim injunction restraining the Appellants from using “NOVIETS”, holding that the learned Single Judge had rightly found a prima facie case of deceptive similarity with the Respondents’ prior registered and reputed mark ‘NOVARTIS’.

Facts of the Case

The Respondents, part of the Novartis group, had adopted the mark ‘NOVARTIS’ /  in 1996 and had continuously used the same in relation to pharmaceutical products. The mark was registered in India, including under Registration No. 700020 in Class 5, and the Respondents relied upon extensive use and substantial goodwill and reputation acquired over the years.

The Appellants were using the mark ‘NOVIETS’ /



, as part of their business names, including Noviets Pharma and other entities engaged in pharmaceutical and veterinary products. The learned Single Judge had granted an interim injunction, finding the competing marks to be visually and phonetically similar and observing that both parties operated in the pharmaceutical sector.

Before the Division Bench, the Appellants contended that 'NOVARTIS' and 'NOVIETS' were dissimilar when compared as a whole and that the Respondents were impermissibly dissecting the marks by relying upon the common prefix "NOV". It was also argued that NOVIETS was used as a corporate/business identifier and that the parties operated through different trade channels.

Issue before the Court

Whether the learned Single Judge had correctly granted an interim injunction restraining the Appellants from using 'NOVIETS', on the ground that it was deceptively similar to the Respondents' prior mark 'NOVARTIS'.

Findings of the Court

The Division Bench agreed that the Respondents had established substantial goodwill and reputation in NOVARTIS, which had been used since 1996. The Court also noted that the Respondents' mark had been recognised as a well-known mark.

While accepting that composite marks ordinarily have to be compared as a whole, the Court held that the Appellants' contention that "NOV" was merely generic or common to trade did not hold good on the facts of the case. The extensive and longstanding use of NOVARTIS had resulted in significant distinctiveness and reputation, particularly in the pharmaceutical sector.

The Court further rejected the argument that the use of NOVIETS merely as a corporate/business name insulated the Appellants from an action for infringement or passing off. It noted that the Appellants had themselves claimed use of NOVIETS since 21 July 2017 in an earlier

trademark application, which was subsequently abandoned after the Respondents' opposition. Further, Section 29(5) of the Trade Marks Act recognises infringement where a registered trademark is used as part of a trade name in respect of the relevant goods or services.

Importantly, the Court found that both parties were engaged in pharmaceutical products and that the competing goods and consumer base were sufficiently similar to create a substantial risk of confusion. The Court also endorsed the application of greater caution in pharmaceutical trademark disputes, given the potentially serious consequences of confusion between pharmaceutical products.

The Court also found that the Appellants had failed to provide an adequate explanation for the adoption of NOVIETS, which prima facie supported the inference of dishonest adoption and an attempt to benefit from the goodwill associated with NOVARTIS.

Held

The Division Bench held that the learned Single Judge had properly exercised the discretion in granting the interim injunction and that there was no perversity, arbitrariness or disregard of settled principles warranting appellate interference. Relying on *Wander Ltd. v. Antox India Pvt. Ltd.*, the Court reiterated that an appellate court should not substitute its own discretion for that of the court of first instance merely because another view may be possible.

The appeal was accordingly dismissed, and the interim injunction restraining the Appellants from using NOVIETS was upheld. The Court clarified that its findings were prima facie and would not influence the final adjudication of the pending suit after trial.

Conclusion

The decision reiterates that while competing composite marks must be assessed in their entirety, a common element may assume significance where a prior mark has acquired substantial distinctiveness and reputation

through longstanding use. The judgment also highlights that use of a deceptively similar mark as a corporate or trade name does not, by itself, take such use outside the scope of an

infringement or passing off claim, particularly where the parties operate in the same pharmaceutical sector.

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