



2025:DHC:9320-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 143/2025 & CM APPL. 59063/2025**

WOW MOMO FOODS PRIVATE LIMITEDAppellant
Through: Mr. Dayan Krishnan, Senior
Advocate with Mr. Ankur Sangal, Mr. Ankit
Arvind, Mr. Shashwat Rakshit, Ms. Amrit
Sharma and Mr. Shreedhar Kale, Advs.

versus

WOW BURGER & ANR.Respondents
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)
16.10.2025

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C. HARI SHANKAR, J.

The *lis*

1. The issue in controversy is limited.
2. The appellant is the registered proprietor, under Section 23 of the Trade Marks Act, 1999¹ of the word marks WOW MOMO, WOW DIMSUMS and WOW MOMO INSTANT as well as various device marks of which WOW! constitutes a prominent part.

¹ "the Act"



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3. CS (Comm) 1161/2024² stands instituted by the appellant, before the Commercial Division of this Court, alleging that, by use of

the marks WOW BURGER,  and , the respondents have infringed the registered trade marks of the appellant. IA 48983/2024, filed by the appellant in the said suit, sought an interlocutory injunction, restraining the respondents, pending disposal

of the suit, from using the marks WOW BURGER,  and



4. By judgement dated 12 September 2025, learned Single Judge of this Court has dismissed IA 48983/2024.

5. Aggrieved thereby, the appellant has instituted the present appeal.

Facts

6. The registrations held by the appellant stand tabulated, in para 3.5 of the judgment of the learned Single Judge, from which the present appeal emanates, thus:

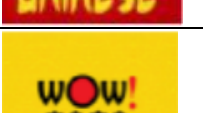
S.No.	Trade Mark	Class	User Claim	Date of Registration
1	WOW MOMO	29	16-06-2008	21-09-2020
2		30	16-06-2008	27-08-2010
3		43	16-06-2008	27-08-2010

² “the suit” hereinafter



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4		30	16-06-2008	22-10-2014
5		35	16-06-2008	22-10-2014
6		43	16-06-2008	22-10-2014
7	WOW DIMSUMS	35	16-06-2008	04-07-2016
8	WOW DIMSUMS	43	16-06-2008	04-07-2016
9	WOW DIMSUMS	30	16-06-2008	04-07-2016
10		29	16-06-2008	21-09-2020
11		32	13/09/2015	21/09/2020
12		35	16-06-2009	19-01-2022
13		43	16-06-2009	19-01-2022
14		32	16/06/2008	18-04-2022
15		43	16/06/2008	18-04-2022
16		30	28-11-2018	09-02-2022
17		43	28-11-2018	18-04-2022
18		32	28/11/2018	18-04-2022
19		29	12-04-2021	29-06-2022



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20		30	12-04-2021	29-06-2022
21	WOW MOMO INSTANT	29	12-04-2021	29-06-2022
22	WOW MOMO INSTANT	30	12-04-2021	29-06-2022
23		9	Proposed to be used	02-11-2022
24		39	Proposed to be used	02-11-2022
25		30	Proposed to be used	23-03-2023

7. Additionally, the appellant also operates the registered domain name/website wow.wowmomo.com, registered in its favour on 28 July 2013.

8. The appellant asserted, in its suit, that it had coined and adopted the marks WOW! and WOW! MOMO in 2008, from which time the appellant has, under the umbrella of the said marks and other associated marks, been rendering services of catering, dine-in, delivery and take away, in the food business, in over 30 cities with 600 outlets. The turnover from the said business, in 2023-2024 alone, was stated to be ₹ 453.932 crores, with ₹ 10.37 crores having been spent by the appellant for promotion of its brand and marks in the year 2023-2024. It was further asserted that the appellant has aggressive presence on social media platforms, and various orders have been



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passed, by this Court and other Courts, protecting the appellant's registered trade marks from infringement and passing off.

9. The appellant further asserted that it learnt, in December 2024, of the intended launch, by Respondent 1, of business activities, in India, under the marks WOW BURGER,  and . This led the appellant to institute the suit, as a *quia timet* action.

10. The appellant contended, before the learned Single Judge, that, by virtue of the registrations held by it in the WOW! family of marks, it was entitled to an injunction against anyone who sought to use a Mark of which WOW constituted a prominent feature, as the mark would, thereby, become deceptively similar to the appellants registered trademarks.

11. Summons in the suit and notice in IA 48983/2024 were issued by the learned Single Judge. There was no response from the respondents. The right of Respondent 1, to file written statement was, therefore, closed on 9 July 2025. As Respondent 2 also failed to respond to the summons issued to it, the learned Single Judge proceeded, on 30 July 2025, to hear arguments in IA 48983/2024.

12. By the judgment under challenge, the IA stands dismissed.

The Impugned Judgment

13. The learned Single Judge has cited the following reasons, for



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rejecting IA 48983/2024:

(i) The appellant has no registration, under the Act, for the marks WOW, WOW! or WOW! BURGER.

(ii) The registrations at S. Nos. 2, 3, 11, 16 and 18 of the Table in para 6 *supra* had been granted to the appellant subject to a disclaimer that they would not claim exclusivity over any individual word in the composite marks.

(iii) The appellant had, in fact, never even applied for registration of the mark WOW.

(iv) WOW is a commonly used word, as an exclamatory remark in the English language. Such words, which constitute part of ordinary parlance, have been held by Courts to be lacking in distinctiveness and to be descriptive in nature, incapable of being monopolised by any single individual or entity. Reliance has been placed, by the learned Single Judge, in this context, on *Pernod Ricard India (P) Ltd v Karanveer Singh Chhabra*³, the judgment of the Division Bench of this Court in *Marico Ltd v Agro Tech Food Ltd*⁴, and the judgment of the Privy Council in *Standard Ideal Co. v Standard Sanitary Manufacturing Co.*⁵

(v) The learned Single Judge has also placed reliance, to support the finding, on the dictionary meaning of the word

³ 2025 SCC OnLine SC 1701

⁴ 174 (2010) DLT 279 (DB)

⁵ 1910 (27) RPC 789



“WOW”, as figuring in the Shorter Oxford English Dictionary, 6th edition, as “a quality, property, or element that impresses, excites or delights”. Thus, holds the learned Single Judge, when used as an adjective, the word “wow” signifies the quality of the product or service for which it is used. The impugned judgment, therefore, holds that, under Section 9(1)(b)⁶ of the Act, a word which merely conveys praise or describes the quality or characteristic of the goods or services, is not entitled to protection as a trademark or to monopoly.

(vi) Section 30(2)(a)⁷ of the Act also provides that, 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.

(vii) The appellant could not, therefore, assert exclusivity over the expression “WOW”, as it was a commonly used laudatory exclamation.

(viii) The disclaimer against use of the individual words

⁶ 9. **Absolute grounds for refusal of registration.—**

(1) The trade marks—

(b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;

shall not be registered:

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

⁷ 30. **Limits on effect of registered 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;



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forming part of the composite marks, in respect of which the appellant has registrations under the Act, amounted to an acknowledgement, by the appellant, that the expression “WOW” is not distinctive.

(ix) In its response to objections raised against the applications submitted by it for registration of its marks, the appellant had stated that the marks of the appellant consisted of a combination of the English dictionary word WOW with a suffix. The appellant had, therefore, admitted the fact that WOW is an ordinary English dictionary word, lacking in distinctiveness, and that distinctiveness was achieved only by combining the word WOW with another suffix. As such, the appellant was estopped from claiming exclusivity over the mark WOW, on a standalone basis.

(x) Further, applying the anti-dissection principle, the appellant could not dissect its mark into WOW and the suffix individually and claim exclusivity, thereby, over the expression WOW. Reliance has been placed, for this purpose, on the judgement of the Supreme Court in *Pernod Ricard*.

(xi) There was no sufficient evidence to indicate that the word WOW, as employed by the appellant, had acquired secondary meaning, so as to exclusively associate it, in the minds of the consumer, with the goods and services of the appellant. The appellant had also been using the mark only since 2008. A turnover of ₹ 453 crores in 2023-2024 was not sufficient to satisfy the Court that the mark WOW, as used by the appellant,



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had acquired secondary meaning.

(xii) There were several other businesses, in the food industry itself, which employed marks of which WOW constituted a prominent part.

(xiii) There was no similarity between the marks of the appellant and the respondent, except for the common WOW prefix. The colour combination, stylisation and themes of the two marks were different. WOW, the only common feature, was a common English dictionary word, and was insufficient to maintain a claim to exclusivity or entitle the appellant to protection against infringement.

(xiv) The respondent was selling burgers in Hong Kong under the  and  marks, of a specific type, which were protein rich and vegetarian. As against this, the appellant was selling vegetarian and non-vegetarian burgers under the name 'Moburg'.

(xv) There was, therefore, no chance of likelihood of confusion between the marks of the appellant and respondent.

14. Aggrieved thereby, the appellant has filed the present appeal.

15. Despite notice, the respondents have not chosen to enter appearance in the present appeal.

16. We, therefore, have heard Mr. Dayan Krishnan, learned Senior



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Counsel for the appellant.

17. Inasmuch as we are inclined to allow the appeal, we do not need it necessary to lengthen this order by reference to the submissions advanced by Mr. Krishnan, which would in any case be captured by our findings.

Analysis

18. An appeal against an order of the Commercial Court, in an application for interlocutory injunction in an intellectual property dispute, is an appeal on principle. The Court does not re-appreciate the evidence or exercise the normal powers which an appellate Court would exercise under Section 96 of the Code of Civil Procedure, 1908. The task of the appellate Court is to examine whether the Commercial Court has applied the correct principles. If it has, the appellate Court is not expected to substitute its subjective view for the view of the Commercial Court.⁸

19. Even within the limited *Wander* parameters, we feel this to be a case deserving of interference, as the learned Single Judge has proceeded on certain erroneous principles. With greatest respect to the learned Single Judge, we are of the opinion that the issue has not been addressed from the correct perspective.

A. The aspect of infringement, vis-a-vis word mark registrations held by the appellant

⁸ Refer *Wander Ltd v Antox India P Ltd*, 1990 Supp SCC 727 (para 14), *Pernod Ricard* (para 19.8)



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20. The impugned judgement fails to notice, or address, the aspect of infringement, by the respondents' **WOW BURGER** and **WOW BURGER** marks, of the word mark registrations held by the appellant. We may explain this, thus.

21. The appellant possesses word mark registrations or the word marks WOW MOMO and WOW MOMO INSTANT in Classes 29 and 30, and of WOW DIMSUMS in Classes 30, 35 and 43. The goods/services covered by these registrations were the following:

Mark	Class	Goods/Services
WOW MOMO	29	Foods prepared from meat, fish, poultry products; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, cheese; pickles, desserts, edible oils and fats. Nonvegetarian food items, meat, fish, poultry, meat extracts, preserved and dried and cooked vegetables and fruits, and fruit items, milk and other dairy products, fruit juices, frozen; cabbage rolls stuffed with meat, shish kebabs; chicken burger patties; fish burger patties; soya burger patties; tofu burger patties; vegetable burger patties; veggie burger patties prepared meals consisting primarily of kebab, vegetable salads, fruit salads, fruit desserts, desserts made from milk products, grilled vegetables, grilled chicken
WOW MOMO INSTANT	30	Spices Momo, Veg Momo, Non-Veg Memo, Momo, Breakfast Cereals, Chinese Noodles (Uncooked), Chinese Rice Noodles (Bifun, Uncooked), Chinese Steamed Dumplings (Shumai, Cooked), Chinese Stuffed Dumplings (Gyoza, Cooked), Dried Cookedrice, Dried Pasta, Dried Pieces Of Wheat Gluten (Fu.Uncooked), Dried Sugared Cakes Of Rice Flour (Rakugan), Farinaceous Food Pastes For Human Consumption, Tapioca, Sago, Artificial Coffee; Flour And



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		Preparations Made From Cereals, Bread, Pastry, Ices; Ready-To-Eat Cereals; Chocolate-Based Readyto- Eat Food Bars; Ready-To-Eat Cereal-Derived Food Bars; Ready To Eat Savory Snack Foods Made From Maize Meal Formed By Extrusion; Instant Soup; Instant Pudding Mixes; Instant Donut Mixes; Deep Frozen Pasta; Noodles; Chinese Noodles; Instant Noodles; Instant Porridge; Frozen Bagels; Frozen Confectionery; Frozen Pastries; Frozen Pizza; Frozen Waffles; Deep Frozen Pasta; Frozen Yogurt; Frozen Cake Dough; Frozen Meals Consisting Primarily Of Pasta; Frozen Confections
WOW MOMO INSTANT	29	Foods prepared from meat, fish, poultry products; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, cheese; pickles, desserts, edible oils and fats. Nonvegetarian food items, meat, fish, poultry, meat extracts, preserved and dried and cooked vegetables and fruits, and fruit items, milk and other dairy products, fruit juices, frozen; cabbage rolls stuffed with meat, shish kebabs; chicken burger patties; fish burger patties; soya burger patties; tofu burger patties; vegetable burger patties; veggie burger patties prepared meals consisting primarily of kebab, vegetable salads, fruit salads, fruit desserts, desserts made from milk products, grilled vegetables, grilled chicken
WOW DIMSUMS	30	Spices Momo, Veg Momo, Non-Veg Momo, all kinds of Momo, breakfast cereals, chinese noodles (uncooked), chinese rice noodles (bifun, uncooked), chinese steamed dumplings (shumai, cooked), chinese stuffed dumplings (gyoza, cooked),dried cooked-rice, dried pasta, dried pieces of wheat gluten (fu. Uncooked),dried sugared cakes of rice flour (rakugan), farinaceous food pastes for human consumption, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry, ices included in class 30.
WOW DIMSUMS	35	Franchise, retail outlet, retail shop for foodstuff, advertising, exhibitions.
WOW DIMSUMS	43	Services for providing food and drink, temporary accommodation, cafe restaurants, momo shop, catering for the provision of food



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		and beverages, catering in fast - food cafeterias, catering of food and drinks, coffee shops, coffee-house and snacks-bar momo bar & services, fast food and non-stop restaurant services, fast-food restaurants, fast-food restaurants and snack bars included in class 43.
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22. “Infringement”, within the meaning of Section 29(2)(b)⁹ of the Act, takes place where

- (a) the Plaintiff has a registered trade mark,
- (b) the defendants mark is similar to the Plaintiff registered trade mark,
- (c) the defendants mark is used for goods, or services, which are identical, or similar, to the goods or services in respect of which the Plaintiff uses its registered trade mark, and
- (d) because of these factors, there is likelihood of confusion in the minds of the public between the marks of the Plaintiff and the defendant or of the public assuming an association between the two marks.

B. The consumer of average intelligence and imperfect recollection, and the initial interest confusion test

23. It is also settled that the “public” is represented by a mythical consumer of average intelligence and imperfect recollection¹⁰, and that the likelihood of confusion has to be assessed from an “initial interest”

⁹ 29. **Infringement of registered trade marks. –**

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

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

¹⁰ Refer **Amritdhara Pharmacy v Satyadeo Gupta AIR 1963 SC 449, Satyam Infoway Ltd. v Sifynet**



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point of view. In other words, if the defendants mark, when initially seen by such a consumer, who has earlier seen the Plaintiff's mark, is likely to be confused between them, or to presume an association between the two marks, infringement has taken place.¹¹ If, on seeing the defendant's mark for the first time, the consumer of average intelligence and imperfect recollection is placed in a state of wonderment, even to the extent that he wonders whether he has seen the mark, or whether the mark could have an association with the WOW MOMO mark which he had seen earlier, the test of initial interest confusion stands satisfied.¹²

C. Distinction between infringement and passing off

24. The impugned judgement appears to have conflated the considerations which apply in a case of passing off, with those which apply to infringement.

25. The tests that apply to infringement and passing off are distinct and different, and this distinction stands tellingly underscored by the following passages from ***Kaviraj Pandit Durga Dutt Sharma v Navaratna Pharmaceuticals Laboratories***¹³

“28. The other ground of objection that the findings are inconsistent really proceeds on an error in appreciating the basic differences between the causes of action and right to relief in suits for passing off and for infringement of a registered trade mark and

Solutions (P) Ltd, (2004) 6 SCC 145.

¹¹ Refer **Grotian, Helfferich, Schulz, Th. Steinweg Nachf, a Corporation v. Steinway & Sons, a Corporation, 365 F. Supp. 707 (1973)**, as cited in **Baker Hughes Ltd v Hiroo Kushalani, (2004) 12 SCC 628** and **Ramdev Food Products Ltd v Arvindbhai Rambhai Patel, (2006) 8 SCC 726**

¹² Refer **Shree Nath Heritage Liquor Pvt Ltd v Allied Blender & Distillers Pvt Ltd, 221 (2015) DLT 359 (DB)**

¹³ **AIR 1965 SC 980**



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*in equating the essentials of a passing off action with those in respect of an action complaining of an infringement of a registered trade mark. We have already pointed out that the suit by the respondent complained both of an invasion of a statutory right under Section 21 in respect of a registered trade mark and also of a passing off by the use of the same mark. The finding in favour of the appellant to which the learned counsel drew our attention was based upon dissimilarity of the packing in which the goods of the two parties were vended, the difference in the physical appearance of the two packets by reason of the variation in the colour and other features and their general get-up together with the circumstance that the name and address of the manufactory of the appellant was prominently displayed on his packets and these features were all set out for negating the respondent's claim that the appellant had passed off his goods as those of the respondent. These matters which are of the essence of the cause of action for relief on the ground of passing off play but a limited role in an action for infringement of a registered trade mark by the registered proprietor who has a statutory right to that mark and who has a statutory remedy for the event of the use by another of that mark or a colourable imitation thereof. While an action for passing off is a Common Law remedy being in substance an action for deceit, that is, a passing off by a person of his own goods as those of another, that is not the gist of an action for infringement. The action for infringement is a statutory remedy conferred on the registered proprietor of a registered trade mark for the vindication of the exclusive right to the use of the trade mark in relation to those goods" (Vide Section 21 of the Act). The use by the defendant of the trade mark of the plaintiff is not essential in an action for passing off, but is the sine qua non in the case of an action for infringement. No doubt, where the evidence in respect of passing off consists merely of the colourable use of a registered trade mark, the essential features of both the actions might coincide in the sense that what would be a colourable imitation of a trade mark in a passing off action would also be such in an action for infringement of the same trade mark. But there the correspondence between the two ceases. *In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered**



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proprietor of the mark would be immaterial; whereas in the case of passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff.

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

(Emphasis supplied)

Thus, infringement, or its absence, has to be tested by comparing



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mark to mark.¹⁴ Added features, such as difference in getup, colour, appearance, and the like, would not be of significance where the marks, compared to each other, are deceptively similar. For a case of passing off to be made out, however, added features, which may distinguish the two marks from each other, would be of significance.

D. Where the comparison is between dissimilar device marks – the *Chinna Krishna Chettiar* principle – How to ascertain the “essential feature” of a mark – Perception of the Court relevant

26. Another important decision, in the context of the present dispute, is that rendered by the Supreme Court in *K.R. Chinna Krishna Chettiar v Shri Ambal & Co.*¹⁵ Though rendered in the context of the erstwhile Trade and Merchandise Marks Act, 1958, the principles enunciated in the said decision continue to apply under the present Trade Marks Act. The appellant and respondents before the Supreme Court, in that case, were dealing in snuff, under the rival marks. Both were device marks, and it is specifically noted, by the Supreme Court in the said decision, that the marks were, visually, totally different and distinct from each other. The marks are thus described, in the opening paragraph of the judgment:

“The respondents were the proprietors of the registered Marks Nos. 126808 and 146291. Trade Mark No. 126208 consists of a label containing a device of a goddess Sri Ambal seated on a globe floating on water enclosed in a circular frame with the legend “Sri Ambal parimala snuff” at the top of the label, and the name and address “Sri Ambal and Co., Madras” at the bottom. Trade mark No. 146291 consists of the expression “Sri Ambal”. The mark of which the appellant seeks registration consists of a label containing three panels. The first and the third panels contain in Tamil,

¹⁴ Also refer *Rajasthan Aushdhalaya Pvt Ltd v Himalaya Global Holdings Ltd*, 2025 SCC OnLine Del 4721

¹⁵ (1969) 2 SCC 131



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Devanagari, Telugu and Kannada the equivalents of the words “Sri Andal Madras Snuff”. The centre panel contains the picture of goddess Sri Andal and the legend “Sri Andal”.”

27. The dispute before the Supreme Court, in the said case, did not arise in the context of a suit either for infringement or passing off. The appellant K.R. Chinna Krishna Chettiar¹⁶ applied for registration of its mark in Class 34 for snuff. The application was opposed by the respondents Shri Ambal & Co.¹⁷, on the ground that the mark, of which Chettiar sought registration, was deceptively similar to SAC’s pre-existing registered trade mark. The Supreme Court identified the issue arising for consideration, in para 3 of its judgement, as “whether the proposed mark is deceptively similar to the respondents marks”.

28. The Registrar of Trade Marks granted registration. He held that, though the rival marks were device marks, they were composite marks in which the distinctive words which appeared thereon constituted the dominant part. Inasmuch as the words “Ambal” and “Andal” were not, according to the Registrar, phonetically deceptively similar, registration of the mark was refused. SAC appealed, against the decision of the Registrar, to the High Court. The High Court disagreed with the view of the Registrar and held that the words “Ambal” and “Andal” were so phonetically similar that the danger of confusion between them was imminent and unavoidable. The appeal of SAC was, therefore, allowed, against which Chettiar appealed to the Division Bench. The Division Bench dismissed the appeal, against which Chettiar appealed to the Supreme Court.

¹⁶ “Chettiar” hereinafter

¹⁷ “SAC” hereinafter



29. The Supreme Court noted that, under Section 12(1) of the 1958 Act, which corresponds to Section 11 of the 1999 Act, a mark, which was deceptively similar to an existing registered trade mark, and the registration of which was, therefore, likely to cause confusion, could not be registered. In the mark “Sri Ambal”, the Supreme Court observed that “Ambal” was the essential feature and that “Sri” the subsidiary part”. This was because, of the two words, “Ambal” was the more distinctive and would “fix itself in the recollection of an average buyer with imperfect recollection”. Thus, *the test for determining the essential feature, or the dominant part, of a composite mark, is to identify that part of the composite mark, if any, which fixes itself in the psyche of an average buyer with imperfect recollection.*

30. Thereafter, the Supreme Court observed that the vital question that arose was whether concurrent use of the two marks in connection with snuff was likely to result in deception. The Supreme Court clarified that this issue was to be decided on the basis of the perception of the Court. To quote, “it is for the court to decide the question on a comparison of the competing marks as a whole and their distinctive and essential features”.

31. Thus, the aspect of deceptive similarity is not one to be decided on evidence, but on the basis of the Court’s perception. The Supreme Court went on to clarify that the Court had to decide the question “on a comparison of the competing marks as a whole and their distinctive and essential features”. Thus tested, the Supreme Court held that if the mark “Sri Andal”, of which Chettiar desired registration, was used in a normal and fair manner, it would come to be known by its



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distinguishing feature “Andal”. Inasmuch as there was striking affinity and affinity of sound between the words “Andal” and “Ambal”, the Supreme Court held that there was “a real danger of confusion between the two marks”. The Supreme Court also went on to reiterate, in para 7 of the its judgment, that though there was no visual resemblance between the two marks, ocular comparison was not always the decisive test. Resemblance between the marks had to be assessed both with reference to the ear as well as with reference to the eye. Thus assessed, there was “a close affinity of sound between Ambal and Andal”.

32. The Supreme Court went on further to address the issue of whether the fact that the rival marks were device marks which were visually dissimilar would make any difference and answered the issue in the negative. In so holding, the Supreme Court relied on the judgment in *De Cordova v Vick Chemical Company*¹⁸, in which it was held by Lord Radcliffe that “ a mark is infringed by another trader if, even without using the whole of it upon or in connection with his goods, *he uses one or more of its essential features*”. This enunciation, therefore, clarifies the position that, even if the rival marks are visually completely dissimilar, replication of one or more of essential features of one mark in the other, so as to result in likelihood of confusion in the mind of the average consumer, would result in infringement.

E. Applying the principles to the facts

¹⁸ (1951) 68 RPC 103



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33. Applying these principles, there can, to our mind, be no manner of doubt that a consumer of average intelligence and imperfect reflection, who is aware of, or has seen, the appellant's mark WOW MOMO would, when he later comes across respondent's mark WOW BURGER, be, at the very least, inclined to presume the existence of an association between the two marks. This appears to us to be so obvious that it does not call for any explanation. If WOW BURGER were to be introduced into the market, it would be normal for any average consumer, who is aware of the pre-existing WOW MOMO brand, to presume that the appellant has now launched a burger range under the name WOW BURGER. This presumption of association, which arises out of the similarity between the marks WOW MOMO and WOW BURGER, and the fact that they are both used for fast food, would result, within the meaning of Section 29(2)(b) of the Act, in infringement.

34. Applying the initial interest principle, the likelihood of confusion or association in the mind of the average consumer who chances upon the respondent's WOW BURGER mark, is apparent. It may be that later, or even a short time thereafter, the consumer is enlightened about the fact that there is no connection between WOW BURGER and WOW MOMO. That subsequent enlightenment would not, in law, mitigate the effect of initial infringement. Infringement, once committed, inexorably persists, and its effect cannot be undone.

F. Re. the finding that “wow” is a common English word – Distinctive nature of appellant's marks



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35. The learned Single Judge has observed, in the impugned judgment, that “WOW” is a common English word, signifying praise denoting excellence in quality. Proceeding from this premise, the learned Single Judge has held the expression “WOW” to be descriptive of the nature of the product in respect of which it is used and, therefore, incapable of monopolisation or any claim to exclusivity.

36. To the extent, that the respondent cannot be enjoined, from solely using the word “WOW”, we have no doubt. “Wow” is, undoubtedly, a common English expression and, in the absence of any evidence of the word “Wow”, *per se*, having acquired a secondary meaning, linking it exclusively with the appellant, the appellant cannot claim exclusivity over the word “WOW”, if used standalone.

37. The respondent is however not using the word “WOW” by itself, but is using the word in conjunction with “BURGER”. The mark of the respondent is not a mere “WOW” but “WOW BURGER”. When “WOW” is used in conjunction with the food item being sold by the user of the mark, it is, to our mind, certainly distinctive.

38. “WOW” is not an adjective. It cannot, therefore, be said to be descriptive of the item in connection with which it is used. At the highest, “WOW” is an exclamation. The very idea of combining the exclamation “WOW” with the food item being sold by the appellant is itself distinctive. The expressions WOW MOMO or WOW DIMSUMS, by itself, do not make any etymological sense, for the simple reason that WOW is not an adjective. The manner of use of



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WOW with the name of the food item, however, is so distinctive as to convey, to the person who sees the mark, the fact that the quality of the food is outstanding.

39. The idea of combining an exclamation with the mundane reference to the food item is inventive and, consequently, distinctive. To our mind, the learned Single Judge has concentrated on whether WOW, seen as a standalone expression, is, or is not, distinctive, and has, in the process, overlooked the fact that, when used in conjunction with the name of the food item, the combined mark becomes distinctive in nature.

40. It is by reason of this distinctive manner of usage of the exclamation WOW with the food item as a combined and composite mark, which is entirely the idea of the appellant, that, if the respondent were to similarly use WOW with another food item, an impression of association between the appellant and the respondent is bound to arise.

G. Idea infringement

41. This also indicates that the present case is also one of idea infringement. The idea of conveying the message that the food dispensed by it is of optimum quality by combining, with the name of the food item such as MOMO or DIMSUMS, the exclamation WOW would stand replicated if the respondent were to use WOW BURGER. In fact, it appears to us to be obvious that the respondent has, in coining and using the name WOW BURGER, borrowed the idea



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reflected in the appellant's marks WOW MOMO and WOW DIMSUM. Such replication of the idea of the mark, as employed by the appellant, also results in likelihood of confusion and is, therefore, often referred to as "idea infringement".

H. Section 17(2)(b) of the Act

42. Section 17(2)(b)¹⁹ of the Trade Marks Act prohibits any claim of exclusivity in part of a composite mark which is not itself individually registered and which is common to the trade or is otherwise of a non-distinctive character. Applying this principle, the observations and findings of the learned Single Judge can only operate to disentitle the appellant from claiming exclusivity over the mark WOW as a standalone mark. The aspect of distinctiveness, in any expression has to be assessed not by seeing the expression "standalone" but keeping in mind the manner in which the expression has been used by the plaintiff. WOW as a standalone expression may not be distinctive. When, however, it is used in combination with the name of a food item, so as to convey the quality of that food item, it acquires distinctiveness.

I. Re. absence of registration for the marks WOW or WOW!

¹⁹ 17. **Effect of registration of parts of a mark. –**

(1) When a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken as a whole.

(2) Notwithstanding anything contained in sub-section (1), when a trade mark—

(b) contains any matter which is common to the trade or is otherwise of a non-distinctive character,

the registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered.



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43. The learned Single Judge has also observed that the appellant has no registration for the mark WOW or WOW! This aspect is also irrelevant. Under Section 17(2)(a)(ii)²⁰, the absence of any trademark registration in favour of the appellant, for WOW as a standalone mark, can only disentitle the appellant from claiming exclusivity *over WOW as a standalone mark*. The proscription against any claim to exclusivity, where the composite mark contains any part which is not separately registered as a trade mark, is “in the matter forming only a part of the whole of the trade mark so registered”. The absence of any registration, in favour of the appellant, for WOW, therefore, would disentitle the appellant only from claiming exclusivity over WOW as a standalone mark. The absence of any registration, held by the appellant, for WOW does not, in any manner, erode the appellant’s claim of exclusivity over the mark WOW MOMO or impact its entitlement to relief against infringement by any other person, by use of a mark which is confusingly or deceptively similar to WOW MOMO, such as WOW BURGER.

J. Applicability of the anti-dissection rule – the “dominant mark” test

44. In that view of the matter, the reliance by the learned Single Judge on the anti-dissection rule is also of no substantial consequence. In fact, the impugned order appears a trifle contradictory on this

²⁰ (2) Notwithstanding anything contained in sub-section (1), when a trade mark—
(a) contains any part—

(ii) which is not separately registered by the proprietor as a trade mark;

the registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered.



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aspect as, even while relying on the anti-dissection rule, the learned Single Judge has rejected the appellant's claim for injunction *inter alia* on the ground that WOW is a commonly used English expression. Thus, in extracting, from the composite mark WOW MOMO or WOW DIMSUMS, the word WOW, the learned Single Judge has herself dissected the mark.

45. However, we are concerned, in the present case, with whether the respondent's mark WOW BURGER does, or does not, infringe the appellant's registered word and device marks WOW MOMO, WOW MOMO INSTANT and WOW DIMSUMS. Seen on whole mark to whole mark basis, as we have already held, there is clear likelihood of confusion or association and, therefore, infringement takes place.

46. Besides, the principle of anti-dissection is subject to the dominant feature test, as had been clearly held in the following passages from the judgments in *M/s. South India Beverages Pvt Ltd v General Mills Marketing Inc & Anr*²¹ and *Pernord Ricard*:

From *South India Beverages*

“20. At this juncture it would be apposite to refer to a recent decision of this Court reported as *Stiefel Laboratories v Ajanta Pharma Ltd*.²² The Court whilst expounding upon the principle of ‘anti-dissection’ cited with approval the views of the eminent author on the subject comprised in his authoritative treatise-McCarthy on Trademarks and Unfair Competition. It was observed:

“41. The anti-dissection rule which is under these circumstances required to be applied in India is really based

²¹ (2015) 61 PTC 231

²² 211 (2014) DLT 296



upon nature of customer. It has been rightly set out in McCarthy on Trademarks and Unfair Competition about the said rule particularly in Para 23.15 which is reproduced hereunder:

23.15 Comparing Marks: Differences v. Similarities

[1] The Anti-Dissection Rule

[a] *Compare composites as a Whole : Conflicting composite marks are to be compared by looking at them as a whole, rather than breaking the marks up into their component parts for comparison. This is the “anti dissection” rule. The rationale for the rule is that the commercial impression of a composite trademark on an ordinary prospective buyer is created by the mark as a whole, not by its component parts. However, it is not a violation of the anti-dissection rule to view the component parts of conflicting composite marks as a preliminary step on the way to an ultimate determination of probable customer reaction to the conflicting composites as a whole. Thus, conflicting marks must be compared in their entirety. A mark should not be dissected or split up into its component parts and each part then compared with corresponding parts of the conflicting mark to determine the likelihood of confusion. It is the impression that the mark as a whole creates on the average reasonably prudent buyer and not the parts thereof, that is important. As the Supreme Court observed: “The commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail. For this reason it should be considered in its entirety.” The anti-dissection rule is based upon a*



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common sense observation of customer behavior : the typical shopper does not retain all of the individual details of a composite mark in his or her mind, but retains only an overall, general impression created by the composite as a whole. It is the overall impression created by the mark from the ordinary shopper's cursory observation in the marketplace that will or will not lead to a likelihood of confusion, not the impression created from a meticulous comparison as expressed in carefully weighed analysis in legal briefs. In litigation over the alleged similarity of marks, the owner will emphasize the similarities and the alleged infringer will emphasize the differences. The point is that the two marks should not be examined with a microscope to find the differences, for this is not the way the average purchaser views the marks. To the average buyer, the points of similarity are more important than minor points of difference. A court should not engage in "technical gymnastics" in an attempt to find some minor differences between conflicting marks.

However, where there are both similarities and differences in the marks, there must be weighed against one another to see which predominate.

The rationale of the anti-dissection rule is based upon this assumption: "An average purchaser does not retain all the details of a mark, but rather the mental impression of the mark creates in its totality. It has been held to be a violation of the anti-dissection rule to focus upon the "prominent" feature of a mark and decide likely confusion solely upon



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that feature, ignoring all other elements of the mark. Similarly, it is improper to find that one portion of a composite mark has no trademark significance, leading to a direct comparison between only that which remains.” [Emphasis Supplied]

21. The view of the author makes it scintillatingly clear, beyond pale of doubt, that the principle of ‘*anti dissection*’ does not impose an absolute embargo upon the consideration of the constituent elements of a composite mark. The said elements may be viewed as a *preliminary step* on the way to an ultimate determination of probable customer reaction to the conflicting composites as a whole. Thus, the principle of ‘*anti-dissection*’ and identification of ‘*dominant mark*’ are not antithetical to one another and if viewed in a holistic perspective, the said principles rather compliment each other.

37. The factual contours of the said case may be succinctly noted in order to appreciate the findings arrived at by the Court. The respondent board had denied the registration of appellant's mark ‘ENERCON’ on the opposition made by the proprietor of the registered trademark ‘TRANSFORMERS ENERGON’. The appellant challenged the said rejection on the ground that word ‘ENERGON’ was not a dominant part of the registered trademark and therefore negated any likelihood of confusion. The Court rejected the plea of the appellant and observed that *both the elements of the opposer's registered trademark i.e. ‘transformers’ and ‘energon’ were equally distinctive and dominant*. The Court added that assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark; on the contrary, the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be *dominated by one or more of its components*.”

From *Pernod Ricard*

“4. However, the application of this principle is nuanced. Courts are not expected to adopt a mechanical, side-by-side comparison of the marks. Rather, judicial scrutiny is guided by interpretative doctrines such as the anti-dissection rule and the



doctrine of the dominant mark, *inter alia*, other well-established tests. Although these principles are frequently applied in tandem, they do not always align perfectly, and courts have differed in their application depending on the specific facts and context of each case.

5. The present case offers an opportunity for this Court to clarify the appropriate analytical framework for evaluating competing trademarks. While the anti-dissection rule - which requires the mark to be considered as a whole - has statutory foundation under the Trade Marks Act, 1999, the doctrine of the dominant mark is a judicially evolved principle, aimed at identifying the essential or memorable component of a mark that is likely to influence consumer perception. The purpose of this doctrine is to determine whether the impugned mark creates a deceptive association in the minds of consumers, thereby enabling the defendant to unjustly benefit from the plaintiff's established reputation. This analysis is guided by the perspective of an average consumer with imperfect recollection, who is not expected to retain or compare marks with exact precision.

32. A foundational principle in trademark law is that marks must be compared as a whole, and not by dissecting them into individual components. This is known as the anti-dissection rule, which reflects the real-world manner in which consumers perceive trademarks - based on their overall impression, encompassing appearance, sound, structure, and commercial impression. In ***Kaviraj Pandit Durga Dutt Sharma v Navratna Pharmaceuticals Laboratories*** (supra), this Court underscored that the correct test for trademark infringement is whether, when considered in its entirety, the defendant's mark is deceptively similar to the plaintiff's registered mark. The Court expressly cautioned against isolating individual parts of a composite mark, as such an approach disregard how consumers actually experience and recall trademarks.

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

32.2. This approach finds further support in the observations of



scholars such as McCarthy in Trademarks and Unfair Competition, who note that consumers seldom engage in detailed, analytical comparisons of competing marks. Purchasing decisions are instead based on imperfect recollection and the general impression created by a mark's sight, sound, and structure. The anti-dissection rule thus aligns the legal test for infringement with the actual behaviour and perception of consumers in the marketplace.

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

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

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

33.2. An analogy that aptly illustrates the significance of a dominant element in a composite mark is that of mixing milk and water. If a small quantity of milk is added to a half-glass of water, the mixture becomes cloudy - the change is perceptible, but the



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

33.3. The dominant feature of a mark is typically identified based on factors such as its visual and phonetic prominence, placement within the mark (with initial components often carrying greater perceptual weight), inherent distinctiveness, and the degree of consumer association it has generated. The dominant element functions as the “hook” that captures the consumer's attention and facilitates brand recall. For instance, in composite marks such as ‘BLENDERS PRIDE’ or ‘IMPERIAL BLUE’, the terms ‘BLENDERS’ and ‘IMPERIAL’ may be regarded as dominant, owing to their distinctive and less frequently used character. In contrast, elements such as ‘PRIDE’ or ‘BLUE’ are relatively generic, descriptive, or commonplace in the liquor industry, as evidenced by other marks like *ROCKFORD PRIDE*, *ROYAL PRIDE*, or *OAK PRIDE*. Such shared or non-distinctive terms cannot be monopolized, unless it is established that they have acquired secondary meaning through extensive and exclusive use, and are uniquely associated with the plaintiff's goods in the minds of the public.”

47. Applying the dominant feature test and taking a leaf from the enunciation of the law in *K.R. Chinna Krishna Chettiar*, the dominant feature of the marks WOW MOMO and WOW BURGER is clearly the prefix “WOW”, as the suffix in each mark merely refers to the food item in respect of which the mark is being used. The dominant feature of the two marks, i.e. WOW, is identical. Applying the dominant feature test, therefore, a *prima facie* case of infringement is made out.



K. The “family of marks” principle

48. The appellant would also be entitled to injunction by applying the “family of marks” principle. In this regard, one may refer to the following passages from the recent decision in *Modi-Mundipharma (P) Ltd v Speciality Meditech (P) Ltd*²³:

“25.11.5 In view of para 18 of *Amar Singh Chawalwala*²⁴, to which the attention of the learned Single Judge appears not to have been drawn, the finding of the learned Single Judge that the family of marks concept would apply only to passing off, is not correct. *Amar Singh Chawalwala*, rendered by a Division Bench of this Court and therefore binding on us, clearly holds the family of marks concepts to apply, equally, to infringement.

25.11.6 The concept of family of marks was also adopted by the High Court of Bombay in *Neon Laboratories v Themis Medicare Ltd.*²⁵, to hold “the “XYLOX family of marks” comprising XYLOX 2%, XYLOX HEAVY, XYLOX GEL, XYLOX ADRENALINE and XYLOX 2% Jelly to be infringing the “LOX family of marks” comprising LOX 2% ADRENALINE, LOX 4%, LOX 5%, LOX HEAVY 5%, LOX VISCOUS, LOXALPRIN, LOXALPRY, LOXIMLA, PLOX and RILOX.”

25.11.9 It is a fact that the Trade Marks Act does not expressly recognise the concept of a family of marks. However, the concept, though judicially created and developed, is merely a manifestation of the principles contained in the Trade Marks Act. When an entity is the proprietor of a number of registered trademarks containing a common prefix or suffix, or a common first or second word, any other mark by a third party which would contain the same first or second word, if used for similar goods or service, could result in likelihood of confusion within the meaning of Section 29(2) of the Trade Marks Act. It is this concept which is elliptically described as the “family of marks” concept. Thus, the concept of a family of marks is not alien to the Trade Marks Act, but merely a recognition of the principles that underlie the statute.”

²³ 2025 SCC OnLine Del 4627

²⁴ *Amar Singh Chawalwala v Shree Vardhaman Rice & General Mills* (2009) 160 DLT 267 (DB)

²⁵ (2014) 60 PTC 621



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49. Where, therefore, an entity has a family of registered marks in all of which the dominant feature is common, it is entitled to protection against use of the same dominant feature by another person in another mark. This is because the use of the common dominant feature in the family of the marks results in that dominant feature conveying an impression, to the consumer of average intelligence and imperfect recollection, that the products come from the same stable. The aspect of likelihood of confusion is, thereby, exacerbated.

50. In the present case, the appellant has a family of marks of which WOW is the common initial prefix. The prefix WOW has, therefore, acquired distinctiveness in view of the existing family of marks. The use of any mark, by a third person, by combining the prefix WOW with the name of a food item, would clearly result in confusion and conveying an impression to the average consumer, that the mark is yet another in the family of the marks belonging to the appellant. This is yet another reason why the respondent cannot be permitted to use the mark WOW BURGER.

L. The Sequitur

51. Applying the above principles, it is clear to this Court that the proposed use of the mark WOW BURGER by the respondent would clearly result in confusion, in the minds of the consumer of average intelligence and imperfect recollection, with the WOW MOMO, WOW MOMO INSTANT and WOW DIMSUMS registered marks of the appellant. At the very least, it would result in the average consumer believing an association between the two marks. That by



itself would suffice to constitute infringement within the meaning of Section 29(2)(b) of the Act.

M. Disclaimers

52. The learned Single Judge has also referred to the fact that some of the marks registered in favour of the appellant carried a disclaimer that the appellant would not seek any exclusivity in respect of the individual words used in the mark. The finding is, with respect, tangential to the issue at hand. The disclaimer cannot affect the issue of whether, seen as whole marks, the respondent's WOW BURGER mark does, or does not, infringe the appellant's registered trade marks.

53. Besides, a disclaimer can affect the right of exclusivity only in respect of the mark to which it applies. Out of the 25 marks, registered in favour of the appellant and tabulated in para 6 *supra*, the disclaimer applies only in the cases of the marks at S. Nos 2, 3, 11, 16 and 18. There is no principle of law by which the disclaimer can attach to any of the other marks. The disclaimer subject to which registration has been granted to the appellant for the marks at S. Nos 2, 3, 11, 16 and 18 cannot, therefore, affect the appellant's right to injunction, under Section 28(1)²⁶ read with Section 135(1)²⁷ of the Act, on the basis of the registrations held by it in respect of all the other marks.

²⁶ 28. **Rights conferred by registration.** –

(1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

²⁷ 135. **Relief in suits for infringement or for passing off.** –

(1) The relief which a court may grant in any suit for infringement or for passing off referred to in Section 134 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or an account of profits, together with or without any order for the delivery-up of the infringing labels and marks for destruction or erasure.



N. Errors in the impugned judgment

54. The learned Single Judge has, in our considered opinion, erred in concentrating on whether WOW, as a standalone mark, was, or was not, distinctive. As a result, the distinctive nature of WOW MOMOS, or WOW DIMSUMS, when seen as composite marks, has not been properly addressed. The basic error in the approach of the learned Single Judge is reflected from the following observation, in para 14 of the impugned order, forming part of the conclusion of the learned Single Judge:

“Before concluding, it would be pertinent to mention that this Court gets a distinct impression from the averments in the plaint that the Plaintiff is trying to appropriate/monopolize the use of the dictionary word ‘WOW’ which this Court cannot do, considering the common nature of the word.”

The prayer of the appellant, in its plaint, was for an injunction restraining the respondents from dealing in any goods or services “under the impugned trade mark “WOW”/ “WOW BURGER”/



or any other mark *as may be identical to or deceptively similar with the Plaintiff's Trade Marks “WOW!MOMO” and other “WOW” formative trade marks*, so as to cause infringement of the Plaintiff's registered trade mark as given in paragraph 13 of the plaint”. The appellant, undisputedly, does not have any registration for the mark “WOW” or “WOW!” per se. The list of trade marks tabulated in para 13 of the plaint – and reproduced in para 6 *supra*, does not include WOW or WOW! per se. All the marks contain WOW, or WOW!, as the prefix with the food item in question as the suffix. The essential claim of the appellant was, therefore, that



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the respondent be restrained from using any mark which would, like the marks of the appellant, contain WOW, or WOW! as the prefix, and the food item as the suffix – like WOW BURGER.

55. The discussion, in the impugned judgment, regarding comparison between the appellant's WOW! MOMO mark and the respondent's WOW BURGER mark is restricted to para 13.10, which compares the marks, not as word marks, but as the device marks



, of the appellant, and



of the

respondent. The learned Single Judge holds that, compared as device marks, there are several distinguishing features between them, such as the colour combination and stylization. Para 28 of **Kaviraj Pt Durga Dutt Sharma**, reproduced in para 25 *supra*, makes it clear that these distinguishing features may be of relevance for assessing passing off, but not for infringement. Infringement has to be determined mark to mark. The appellant has word mark registrations for WOW MOMO, WOW DIMSUM and WOW MOMO INSTANT. As such, the respondent cannot be permitted to use any mark which, if they coexist with these registered word marks of the appellant, are likely to result in confusion, *or a presumption of association between the marks*, in the mind of the consumer of average intelligence and imperfect recollection. Viewed thus, it appears to us to be indisputable that the initial impression that such an average consumer, who comes across the respondent's proposed WOW BURGER mark, is that there is an association with the WOW! MOMO mark of the appellant, as the combination of the exclamation WOW! with the name of the food item in question is clearly distinctive in nature. The average consumer



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is bound to presume that the appellant has expanded its product range to burgers.

56. The mere visual difference between the device marks is unlikely to mitigate this likelihood of confusion, beside being an irrelevant consideration for the purposes of infringement. Notably, the list of registered marks of the appellant, as tabulated in para 6 *supra*, clearly reveals that the appellant, too, uses many different types of marks, which are different in lettering, colour combination and appearance. Not much, therefore, can turn on the difference in physical appearance between the device marks of the appellant and respondent.

57. For the purposes of infringement, considerations such as the menu card of the appellant, or the fact that the appellant may be selling vegetarian and non-vegetarian burgers, while the respondent's proposed range is of protein rich vegetarian burgers, or the fact that the appellant may be selling its burgers under the sub-brand 'MOBURG', are all entirely irrelevant. What matters, and is determinatively in favour of the appellant, is the fact that the respondent's proposed WOW BURGER mark infringes the appellant's WOW MOMO and WOW DIMSUM registered trade marks, seen mark to mark. That is all that is needed to make out a *prima facie* case of infringement.

58. Having proceeded on considerations which are extraneous to the issue of infringement, and not having taking into consideration the relevant factors, we are constrained to hold that the impugned



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judgment is unsustainable in law.

Conclusion

59. For the aforesaid reasons, the impugned order dated 12 September 2025 of the learned Single Judge is quashed and set aside.

60. The defendants shall stand restrained, pending disposal of the suit, from using the marks “WOW BURGER”,   or any other mark as may be identical to or deceptively similar with the Plaintiff’s Trade Marks “WOW! MOMO” and other “WOW” formative trade marks.

61. IA 48983/2024 filed by the appellant in CS (Comm) 1161/2024 shall stand allowed to the above extent.

62. The appeal stands allowed accordingly.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

OCTOBER 16, 2025

AR/DSN