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MINISTRY OF COMMERCE & INDUSTRY

व्यापार चिह्न रजिस्ट्री /Trade Marks Registry

बौद्धिक सम्पदा भवन / I.P.O. BUILDING

प्लॉटन32 ./PLOT NO. 32

सैक्टर14-/ SECTOR 14,द्वारका/ DWARKA

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NO. TMR/DEL/SCH/2025/16

CGPDTM-11021(11)/1/2025/CGTMR/1784

Date: 21/11/2025

ORDER

BACKGROUND

1. The Trade Marks Registry, India, has received a trade mark application No. 5860303, which falls under the category of rarest applications and challenges legal boundaries of the trade marks law in India, namely, the Trade Marks Act, 1999 (Act) and the Trade Marks Rules, 2017.
2. The application was filed by Sumitomo Rubber Industries Ltd., 6-9, 3-chome, Wakinohamacho, Chuo-ku, Kobe, 651-0072, **Japan**, seeking registration of a trademark “**FLORAL FRAGRANCE / SMELL REMINISCENT OF ROSES AS APPLIED TO TYRES**” on 23/03/2023 in class 12 – tyres for vehicles - according to the Nice classification on a “**proposed to be used basis**”. The application is the first of its kind, which in effect seeks registration of a smell mark in India.
3. The application was examined and was objected under sections 9(1)(a) and 2(zb) of the Act for lacking distinctiveness and not being supported by a graphical representation, which is a mandatory requirement under the Act. The scope of protection sought in the application was not clear. Accordingly, an examination report dated 04.08.2023 was sent to the Applicant. A response to the examination report dated 27.09.2023 was filed by the Applicant. Thereafter, multiple hearing notices were issued, hearings were attended by the Applicant and multiple written responses were also submitted by the Applicant.
4. Acknowledging the need for impartial assistance and support, Shri Pravin Anand was appointed as *amicus curiae* in the matter due to his vast experience in Trade Marks law. During the course of proceedings, the *amicus curiae* made submissions to assist the

Registry and also submitted a supporting scientific report in an endeavour to scientifically and objectively establish the distinctiveness of the mark applied for.

SUBMISSIONS MADE BY THE APPLICANT

5. The Applicant submitted that the instant mark is a distinctive smell mark which encompasses the potent floral scent of roses that is incorporated into the tyres produced by the Applicant. The enduring nature of floral fragrances has the power to evoke memories. The Applicant has infused the floral fragrance of roses into their products as an integral component of their business strategy and product development since the year 1995.
6. The application filed by the Applicant was successfully registered as **'a floral fragrance/smell reminiscent of roses as applied to tires' under trademark number UK 00002001416, with application dated October 31, 1994 (registered in the year 1996)**, which was the first instance of the UK recognizing an olfactory/smell trademark. The registration in the UK is indicative of the fact that a smell mark has been considered as distinctive and capable of registration as a trademark.
7. The instant mark has successfully acquired distinctiveness through their unique innovation of infusing a floral fragrance, specifically one reminiscent of roses, into the tires manufactured by them. The Applicant has invested significantly in research and development, pioneering the incorporation of scents into their tires, creating a distinct and memorable sensory experience for consumers. As a result, their tires with a floral rose-like scent have become a symbol of quality, innovation, and a refreshing driving experience, making them stand out in the highly competitive tire industry. The instant trademark is associated with the Applicant, exclusively and the same has acquired formidable reputation and unparalleled distinctiveness. The instant mark has been created exclusively by the Applicant and recognized worldwide. The floral fragrance always creates and reflects memories in the minds of the consumer which is highly distinctive. The instant mark has garnered substantial international recognition as the first smell mark registered in the UK, and popularized through various third-party websites, Indian and international publications, and newspapers.
8. Under modern business conditions a trademark performs four cardinal functions: (1) identifies products and their origin; (2) guarantees its unchanged quality; (3) advertisement; and (4) creates an image of the product. Considering aforementioned aspects pertaining to the trade marks, it is a possible moot that a '*smell*' can be afforded the protection of trademarks, too.

9. In the case of a mark where the smell is well-known to members of the public, the use of the descriptive word for the said smell is good enough as their representation. For example, the smell of Roseberry in relation to engine oil, is a smell known to all through past experience of consuming Roseberry and for that reason, it does not require any technology to describe the smell. Similarly, freshly cut grass, the smell is so well-known that it does not require any form of technical solution to describe the same. Further, the smell of soil after rain is known as petrichor and it does not require any detailed description. In contrast, if we have an amorphous, ambiguous smell like a perfume, it will be difficult to describe the same and an objection can be taken that it is not capable of the graphic representation.
10. On the question of distinctiveness, the Applicant submitted that there is no smell which parallels the smell of roses and therefore, the moment we say the smell of a rose, it is clear to the perceiving public what the smell is. In the circumstances, not only is the smell of a rose well-known, but the product in question, namely rubber tyres, are also quite clear and distinct. Because of this unique combination and the smell of the product, no further description is required. Further, the examination of a smell can be easily conducted simply by imagining the smell of a rose as applied to tyres.
11. Smell marks have been considered as capable of registration as trademarks in multiple jurisdictions across the world including in Australia, Costa Rica, European Union, United Kingdom and United States of America. The trademark laws of Australia and UK specifically require a trademark to be graphically represented and smell mark registration has been registered basis (i) a statement describing the smell; and (ii) without any further graph/ chemical composition/ designation of smell in a diagram indicating notes or chemical formulation. Examples of 26 such smell mark applications which were granted registration in the above stated jurisdictions were submitted by the Applicant.
12. As per Section 2(1)(zb) of the Trade Marks Act, 1999, a trade mark means a mark:
- (i) capable of being represented graphically - The instant mark i.e. "floral fragrance/ smell reminiscent of roses" as applied to tyres", is a clear statement that describes with precision the smell mark. The statement used to describe the smell is clear, precise, and objective standard.
 - (ii) capable of distinguishing the goods or services of one person from those of others - There is no co-relation between the instant mark (smell reminiscent of roses) and the goods in respect of which the instant mark is being applied (i.e. tyres for

vehicles) and thus, the mark is arbitrary in nature and inherently distinctive, capable of being granted registration.

- (iii) this specific trademark, “The mark is a floral fragrance/ smell reminiscent of roses as applied to tyres” has been granted registration in UK under registration no. UK00002001416 dated 31st October 1994. This registration grant is evocative of the distinctive character of the instant smell mark.

13. As regards the standard of confusion, the applicant submitted that:

- (i) The possibility of confusion has to be approached from the point of view of a “Man of Average Intelligence and Imperfect Recollection”.
- (ii) The instant mark, Floral Fragrance/ Smell Reminiscent of Roses as applied to Tyres, is a clear, precise, objective statement being made about an accessible smell by a man of average intelligence and imperfect recollection. There can be no confusion or deception in an average man understanding this smell mark statement.
- (iii) In fact, the smell of roses, has been objectively held to be one of the most commonly understood smell worldwide.
- (iv) As per the case of *Siekmann v. German Patent and Trademark Office*, 12 December 2002, the European Court of Justice held that for a scent to qualify for a registration:
 - (a) it should be capable of being represented graphically, and that
 - (b) the representation is clear, precise, self-contained, easily accessible, intelligible, durable and objective.
- (v) In the case of *Vennootschap Onder Firma Senta Aromatic Marketing v. Markgraaf B.V.*, dated 11.02.1999, the appellant sought to register as an olfactory mark ‘the smell of fresh cut grass’ for tennis balls in Class 28 of the Nice Classification. The examiner refused the application on the ground that the mark was not graphically represented. The second Board of Appeal of the EUIPO drew a parallel with the registration of sound marks, holding that a description of the music was enough, which was quite different from the music itself. Similarly, a description of a smell gives a clear information to the readers being distinct and recognizable to all from their past experience, and in this case, one of spring and manicured lawns, etc. Therefore, the mark was held to be registerable.
- (vi) It is essential in this case to explain further the existing law at the time of the decision (in the year 2002) and the rationale of accepting olfactory marks as trademarks. In the case of a mark where the smell is well-known to members of the

public, the use of the descriptive word for the said smell is good enough as their representation. For example, the smell of Roseberry in relation to engine oil is a smell known to all through past experience of consuming Roseberry and for that reason, it does not require any technology to describe the smell. Similarly, even for fresh cut grass, the smell is so well-known that it does not require any form of technical solution to describe the same. Further the smell of soil after rain is easily identifiable and does not require any detailed description. In light of the aforesaid, a parallel can be drawn with the smell of roses which is well-known and identifiable. Since there is no confusion with how roses smell, no variations in the nature of smell from different roses, thus, there is a clear standard for such a smell. There is no requirement for any further elaboration for the general public to comprehend the smell being protected. Thus, the standard and criterion enlisted above are satisfied in so far as the instant mark is concerned.

14. The Applicant quoting Shakespeare stated that “a rose by any other name would smell as sweet” has important meaning in this context. This quote suggest that a name is just a label to distinguish one thing from another, the importance of a person or thing is the way it is; not because of what it is called. The smell of roses is generally a commonly understood and widely recognized fragrance. It's often considered a classic floral scent, and roses have been cultivated for their fragrance for thousands of years, becoming a staple in perfumery and other products.

(i) Ubiquity:

Roses are among the most popular ornamental plants, and their fragrance is readily available in gardens, homes, and various products.

(ii) Historical Significance:

Roses have been used for their scent in perfumes, cosmetics, and religious ceremonies for centuries, further solidifying their recognition.

(iii) Positive Associations:

The rose scent is often associated with love, romance, and positive emotions, further contributing to its widespread understanding and appreciation.

(iv) Emotional Impact:

Research indicates that the scent of roses evokes positive emotions, including feelings of well-being and relaxation.

The Applicant was therefore of the view that the instant mark comprising of the smell of roses as applied to tyres, is a very well understood smell by a man of average

intelligence and hence it's description in a statement is a clear and unambiguous visual description of this smell.

15. The Applicant adopted the graphical representation submitted by the *amicus curiae*, in order to satisfy the objection raised by the Trade Marks Registry on the aspect of non-compliance of mandatory requirement of a graphical representation of the mark in question. The graphical representation was prepared by 3 inventors of IIIT Allahabad, who, using the technology developed at the institute, have made a graphical representation of rose-like smell as a vector in the 7-dimensional space wherein each dimension is defined as one of the 7 fundamental smells, namely floral, fruity, woody, nutty, pungent, sweet, and minty. The Applicant submitted that the graphical representation which accurately defines the smell mark and that the statement "Floral Fragrance/ Smell Reminiscent of Roses as applied to Tyres" be accompanied with the above graphical representation.
16. The Applicant concluded by submitting that the smell mark can be granted registration on the basis of the statement describing the smell trademark, accompanied with the graphical representation submitted by the *amicus curiae* and that the application number 5860303 in Class 12 for registration of the smell mark "Floral Fragrance/ Smell Reminiscent of Roses as Applied to Tyres" may be accepted for advertisement in the Trade Marks Journal as an "Olfactory Trademark" with the statement and the said graphical representation.

SUBMISSIONS MADE BY THE *AMICUS CURIAE*

17. In the case of smell marks, there are two important considerations, namely, that the Trademark is capable of being graphically represented; and that the Trademark is distinctive.
18. Internationally, many countries of the world have recognized scent marks as trade marks and the same have been granted registration, as being capable of distinguishing the goods of the owners. Countries like Australia, recognize scent marks as a category of trade mark.
19. The Australian trade mark law protects a distinct smell associated with a product or service. The same specifies that a scent that's commonly associated with goods or services may be difficult to register (e.g. the scent of lemon for washing liquid). In the United States of America, the Applicant needs to prove that the unique fragrance is not the actual function of the product, but a mark for consumers to identify and distinguish the brand. This means that the unique smell of products such as perfume, floral water,

air fresheners, etc., which are the actual functions of the goods, cannot meet the basic requirements of trademark application.

20. The U.S. Trademark Examination Procedure Manual summarizes the examination standards for scent trademarks. The smell must not be functional; it is not necessary to provide a trademark image when applying for a scent trademark, but a detailed description of the trademark must be provided; it must be proved that the smell has the function of identifying the source of goods or trademark services; odor samples must be provided for the inspectors to smell.
21. A detailed list of smell marks that have been granted protection in different jurisdictions was submitted and it was stated that while the Indian Trade Marks Law does not specifically mention about scent or olfactory marks, however, the same also does not explicitly state that it cannot be registered. In the present case, the smell of roses is arbitrary and unique to the product type of the Applicant and inherently distinctive. The mark is capable of distinguishing the Applicant's product and is a distinctive mark, associated only with the Applicant and none else. The *amicus curiae* was of the opinion that the objections raised in the Examination Reports may be removed and the application be advertised as accepted in the Trade Marks Journal.
22. A scientific graphical representation dated 13th September 2024 was also submitted which was prepared by Prof. Prithish Varadwaj, Prof. Neetesh Purohit and Dr. Suneet Yadav of the Indian Institute of Information Technology, Allahabad. This representation will be discussed in detail below in the relevant paragraphs.

ANALYSIS

23. I have heard and reviewed the written submissions made by the Applicant as well as the *amicus curiae* in detail.
24. The Trade Marks Act, 1999 defines a trade mark as follows in section 2(1)(zb):

“(zb) “trade mark” means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and—

(i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or

services, as the case may be, and some person having the right as proprietor to use the mark; and

(ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark;”

25. The Trade and Merchandise Marks Act, 1958 which was repealed by the Trade Marks Act, 1999 defined a trade mark as follows in section 2(1)(v):

“(v) “trade mark” means—

(i) in relation to Chapter X (other than section 81), a registered trade mark or a mark used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right as proprietor to use the mark; and

(ii) in relation to the other provisions of this Act, a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of, trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark registered as such under the provisions of Chapter VIII;”

26. One more aspect that needs to be taken into account is the definition of the term ‘mark’ in section 2(1)(m), which states as follows:

“(m) “mark” includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof;”.

The 1999 Act does not include a positive mention of smell marks within the definition of the term mark. However, section 2(1)(m) contains an inclusive definition which allows for the inclusion of more categories of marks. Therefore, this provision in itself cannot be the reason to refuse a smell mark, provided that the requirements of section 2(1)(zb) – distinctiveness and graphical representation – are complied with.

27. Two important changes brought about by the 1999 Act, when compared with the 1958 Act, were: (i) that the mark should be distinctive and (ii) it should be capable of being represented graphically. There was a specific legislative intent behind the introduction

of these two requirements and the said intent has to be given effect. Primarily therefore, the following two issues are required to be addressed to dispose of the present Trade Mark application:

- a. Whether the Applicant's mark qualifies to be a trade mark in view of the mandatory requirement of a graphical representation under section 2(1)(zb) of the Act.
- b. Whether the Applicant's mark "FLORAL FRAGRANCE / SMELL REMINISCENT OF ROSES AS APPLIED TO TYRES" is devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person.

28. Before discussing the above two issues, a pertinent question that needs to be addressed in light of the facts and circumstances of this case is 'what is the purpose of the trade mark law'. This is a topic on which a considerable amount of legal research has been conducted and lengthy commentaries are available from learned and globally acclaimed authors. Based on my experience, trade mark law serves as an enabler of trade. On one hand, it enables businesses by protecting their goodwill in the graphically represented marks they adopt for various goods and services that they offer in the market. On the other hand, it prevents confusion among customers by prohibiting the registration of marks that are not distinctive and that cannot be represented graphically - two standards that are the cornerstone of the Trade Marks Act, 1999.

GRAPHICAL REPRESENTATION

29. In the trade mark application under question, one fact that went strongly against the application was the absence of a graphical representation which is a mandatory requirement under section 2(1)(zb) of the Act. The Applicant adopted the graphical representation placed on record by the *amicus curiae*, which was dated 13th September 2024 and was prepared by Prof. Prithish Varadwaj, Prof. Neetesh Purohit and Dr. Suneet Yadav of the Indian Institute of Information Technology, Allahabad. The description of the graphical representation which is also accompanied by a graph is as follows:

"A complex mixture of volatile organic compounds released by the petals interact with our olfactory receptors, creating a rose-like smell. Using the technology developed at IIIT Allahabad, this rose-like smell is graphically presented above as a vector in the 7-dimensional space wherein each

dimension is defined as one of the 7 fundamental smells, namely floral, fruity, woody, nutty, pungent, sweet and minty.”

30. The graphical representation of the smell in question has been represented as a vector in 7-dimensional space that is enclosed in Annexure-1 herein.
31. Word marks are more easily perceptible and a large number of variations around the same word may get registered as different trade marks by different trade mark proprietors. However, in the field of smell marks a large number of variations around the smell, for instance the smell of roses, may not be possible. Therefore, closely spaced trade marks may not get registered in the field of smell marks. However, this cannot also be the reason for refusal of a trade mark application. Different fields of trade and commerce may require special treatment to safeguard the interests of businesses and their customers.
32. A graphical representation akin to the one that is usually filed by applicants in case of for instance a word mark or a device mark cannot be filed with reference to the smell in question, and the same cannot be the reason to deprive an entire sector of industry working in the field of smells and aromas from the benefits of the Act. This application deserves to be evaluated on an independent pedestal and a careful unbiased analysis is warranted. When the facts in the present matter are different, the approach towards compliance of section 2(1)(zb) can also be different if the same is allowed by the text of the provision.
33. I have considered the above graphical representation with due care. The smell in question comprises of 7 constituent smells as follows in the order of their strength – floral, fruity, woody-nutty, sweet, minty, pungent. In my experience, the various smells will get activated in the order of their strength, that is, the strongest smell will first get activated, followed by the next smell that is lower in strength in the order given above. The constituent smells will also get exhausted in this order and in the end a pungent smell will be the longest lasting smell.
34. The graphical representation is detailed and clearly defines and distinguishes, with a scientific temperament the presence of the constituent elements, including their scale or weightage in the overall composition. The graphical representation would enable the competent authorities and the public to determine the precise subject matter of protection. I am therefore of the considered opinion that the above representation sufficiently captures the metes and bounds of the smell in question and complies with the mandatory requirements of section 2(1)(zb) of the Act.

DISTINCTIVENESS

35. As regards distinctiveness, in case of visually perceptible marks, a mere glance may be sufficient to establish distinctiveness, consequently resulting in a familiarity or a relationship thereby facilitating their registration. However, in case of non-conventional marks this may or may not be the case due to which the Applicants have to make out a convincing case, to successfully seek registration as a trade mark because a registered trade mark should not *ipso facto* contribute towards confusion among the consumers.
36. Distinctiveness is a criterion that also tends to change its measure over a period of time. With the growth of trade and commerce, an increasing number of goods and services are available to the customers, resulting into growing number of marks being registered. With the passage of time, due to an increasing number of registered trade marks that are available on the register of trade marks under the Act, the registration of subsequent marks is becoming a challenging affair, as the presence of marks already available on the register has also to be considered in addition to any fact related to acquired distinctiveness. Accordingly, while the marks that were first registered under the 1999 Act, may have been registered with relative ease, the same may not be true for the marks submitted today for registration.
37. When a vehicle fitted with tyres containing the present smell passes by, a customer perceiving the smell in question will have no difficulty in forming an association between the goods (tyres) and the source of the goods (the Applicant). This experience would leave a very strong impression upon such a customer as it would be in stark contrast with the smell of rubber that is usually expected while one is standing near a frequently used highway or a road. Also, the scent of roses bears no direct relationship with the nature, characteristics, or use of tyres and is, therefore, arbitrary in its application to such goods. I have therefore no hesitation in holding that the trade mark in question is distinctive.

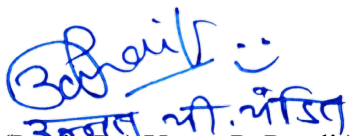
DECISION

38. The trade mark in question satisfies the criteria laid down for registration under the Trade Marks Act, 1999, as it is clear, precise, self-contained, intelligible, objective and is represented graphically. The trade mark is hereby accepted. The Registry is directed to advertise the trade mark application bearing No. 5860303 for **“FLORAL FRAGRANCE / SMELL REMINISCENT OF ROSES AS APPLIED TO TYRES”** in class 12 on a **“proposed to be used basis”** in accordance with the

provisions of section 20 of the Trade Marks Act, 1999 as an ‘olfactory mark’ along with the following graphical representation and description submitted by the Applicant in Annexure-1 is enclosed and states as follows:

“A complex mixture of volatile organic compounds released by the petals interact with our olfactory receptors, creating a rose-like smell. Using the technology developed at IIIT Allahabad, this rose-like smell is graphically presented above as a vector in the 7-dimensional space wherein each dimension is defined as one of the 7 fundamental smells, namely floral, fruity, woody, nutty, pungent, sweet and minty.”

39. The Registry acknowledges the scientific, technical and legal inputs submitted by the *amicus curiae* given the complexity surrounding the facts of this application, specifically the graphical representation of the smell mark under reference. The Registry also acknowledges the role of Prof. Prithish Varadwaj, Prof. Neetesh Purohit and Dr. Suneet Yadav of the Indian Institute of Information Technology, Allahabad who prepared the novel and innovative graphical representation. The Registry also acknowledges the in-depth comparative legal analysis provided by Ms. Swati Sharma, the agent of the applicant which provided a detailed view of the law and jurisprudence on the issue of smell-marks globally.


(Prof. (Dr) Unnat P. Pandit)

Controller General of Patents, Designs and Trade Marks

To,
Ms. Swati Sharma
Counsel of the Applicant
Enrolment No. D-505/2007

Copy to,
1. The Head of Office, TMR Delhi and Mumbai
2. Sh. Pravin Anand, *Amicus Curiae*
Enrolment No. D-178/1979



भारतीय सूचना प्रौद्योगिकी संस्थान, इलाहाबाद

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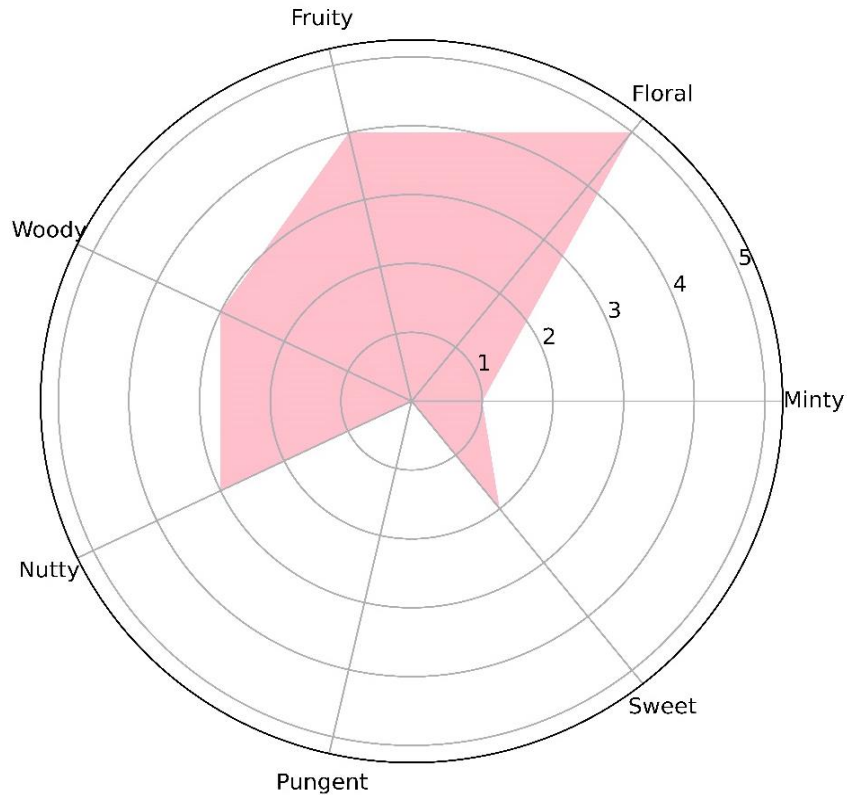
Annexure A

देवघाट, झलवा, प्रयागराज-211015 (उत्तर प्रदेश), भारत

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Graphical Representation of Rose-like Smell



Description: A complex mixture of volatile organic compounds released by the petals interact with our olfactory receptors, creating a rose-like smell. Using the technology developed at IIIT Allahabad, this rose-like smell is graphically presented above as a vector in the 7-dimensional space wherein each dimension is defined as one of the 7 fundamental smells, namely floral, fruity, woody, nutty, pungent, sweet, and minty.

The Methodology: Over and above our primary research (available in the public domain) based upon supervised machine learning, we have done additional processing and analysis for identifying the top 5 contributing compounds, and an algebraic average of vectors is done to arrive at the above graphical representation.

Handing Over: After receiving the consultancy fee into IIITA's bank account, the graphical representation is handed over to Shri Praveen Anand on Sept 13th 2024.

(Prof. Prithish Varadwaj)

(Prof. Neetesh Purohit)

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(Dr Suneel Yadav)