*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 19.01.2026
Pronounced on: 27.02.2026

\+ FAO(OS) (COMM) 111/2024 & CM APPL. 33733/2024, CM APPL. 33736/2024

MOUNTAIN VALLEY SPRINGS INDIA PRIVATE LIMITED .....Appellant

Through: Ms. Swathi Sukumar, Sr. Adv. with Mr.Essenese Obhan, Mr.Neel Mason, Ms.Ayesha Guhathakurta and Ms.Urvika Aggarwal, Advs.

versus

BABY FOREST AYURVEDA PRIVATE LIMITED (FORMERLY KNOWN AS M/S LANDSMILL HEALTHCARE PRIVATE LIMITED) & ORS.
.....Respondents

Through: Mr.Jayant Mehta, Sr. Adv. with Mr.Sundeep Chatterjee, Mr.Rohan Swarup, Ms.Tanya Arora, Ms.Aastha Verma, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN

J U D G M E N T

NAVIN CHAWLA, J.

1. This appeal has been filed challenging the judgment dated 15.05.2024 passed by the learned Single Judge of this Court in I.A. 14373/2023 and I.A.21648/2023 in CS (COMM) 523/2023, titled

Mountain Valley Springs India Private Limited v. Baby Forest Ayurveda Private Limited (formerly known as M/S Landsmill Healthcare Private Limited), whereby the learned Single Judge has dismissed the said applications filed by the appellant under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (in short, 'CPC') and refused an *interim* order of injunction against the respondents herein for restraining them from using the mark 'BABY FOREST' and 'BABY FOREST-SOHAM OF AYUVEDA' (hereinafter referred to as the 'Challenged Marks').

2. It is pertinent to mention that, by an undertaking given to the Court on 04.08.2023 in I.A. 14373/2023, the respondents agreed not use the marks 'SAUNDARYA' and 'BABY ESSENTIALS'. Consequently, the controversy stood confined to the Challenged Marks.

Case of the appellant:

3. It is the case of the appellant that it sells product formulations based on the ancient science of Ayurveda, and has been using the mark 'FOREST ESSENTIALS' continuously since at least 2000, with annual sales of over Rs. 425 crores. It supplies its products to over 500 hotel chains, has over 150 stores, exports internationally, and is also available online on its own website as well as on the e-commerce platforms such as Amazon (www.amazon.in) and Flipkart (www.flipkart.com).

4. The details of the various marks registered in favour of the appellant are tabulated as under:

S. No.	Trademark	Registration / Application No.	Application Date	Class	Status
1.	FOREST ESSENTIALS(LOGO)	1125917	13/08/2002	03	Registered
2.	FOREST ESSENTIALS	1640599	11/01/2008	03	Pending
3.	FOREST ESSENTIALS	1640600	11/01/2008	05	Registered
4.	FOREST ESSENTIALS	1640601	11/01/2008	09	Pending
5.	FOREST ESSENTIALS	1640602	11/01/2008	10	Registered
6.	FOREST ESSENTIALS	1640603	11/01/2008	16	Registered
7.	FOREST ESSENTIALS	1640604	11/01/2008	20	Registered
8.	FOREST ESSENTIALS	1640605	11/01/2008	21	Registered
9.	FOREST ESSENTIALS	1640606	11/01/2008	25	Registered
10.	FOREST ESSENTIALS	1640607	11/01/2008	29	Registered
11.	FOREST ESSENTIALS	1640608	11/01/2008	30	Registered
12.	FOREST ESSENTIALS	1640609	11/01/2008	31	Registered
13.	FOREST ESSENTIALS	1640610	11/01/2008	32	Registered
14.	FOREST ESSENTIALS	1640611	11/01/2008	33	Registered
15.	FOREST ESSENTIALS	1640612	11/01/2008	35	Registered
16.	FOREST ESSENTIALS	1640613	11/01/2008	41	Registered
17.	FOREST ESSENTIALS	1640614	11/01/2008	42	Registered
18.		1748470	27/10/2008	03	Registered
19.		1748471	27/10/2008	05	Pending

S. No.	Trademark	Registration / Application No.	Application Date	Class	Status
20.		1748472	27/10/2008	16	Pending
21.		1748473	27/10/2008	35	Registered
22.		1748474	27/10/2008	42	Registered
23.	FOREST ESSENTIALS	3932253	31/08/2018	03	Registered
24.		4975130	17/05/2021	03	Registered
25.		4975131	17/05/2021	03	Pending
26.		4975132	17/05/2021	03	Pending

5. The appellant further asserts to have continuously sold its 'Mother and Baby Care' products since 2006 under its marks 'FOREST ESSENTIALS-BABY ESSENTIALS' and 'FOREST ESSENTIALS BABY', and claims annual sales of approximately Rs. 15 crores in baby products.

6. It is the case of the appellant that in June 2023, it came across the respondent's website (https://www.babyforest.in/) and social media pages. After going through the same, it came to know that the respondents have illegally, knowingly and with malice, adopted the Challenged Marks 'BABY FOREST' and 'BABY FOREST–SOHAM OF AYURVEDA' as well as a similar '*Tree*' logo for selling

ayurveda based products for babies and other allied goods, which are deceptively similar to the appellant's trademarks 'FOREST ESSENTIALS', 'FOREST ESSENTIALS-BABY ESSENTIALS', 'FOREST ESSENTIALS BABY' and 'LUXURIOUS AYURVEDA'.

7. It is asserted by the appellant that the respondents were operating under the name '*M/s Landsmill Healthcare Private Limited*', but have rebranded to '*Baby Forest Ayurveda Private Limited*', sometime around December 2022 - January 2023, to mimic the appellant. It is asserted that the respondents have also maliciously obtained the registration on a '*proposed to be used basis'*, in 2020 of the mark 'BABY FOREST' in trademark classes 28, 35, 21, 25, 3, and 5, against which the appellant has filed rectifications which are pending before this Court.

8. It is asserted that the respondents have also actively encouraged customer confusion on social media by not responding to customers asking if 'BABY FOREST' was part of 'FOREST ESSENTIALS'. The appellant has also received queries from its own clients asking whether the respondents were associated with it. Further, the Google search engine, when '*is baby f*' was typed, has also predicted the search query as '*is baby forest and forest essentials same*'. The respondents also launched a store in Saket, Delhi, in the very same mall as the appellant's store, to follow the footsteps of the appellant. The appellant asserts that, therefore, there is actual evidence of confusion and deception being caused due to the respondents using the Challenged Marks.

9. It is asserted that the respondents have, in fact, themselves admitted to the confusion, by opposing the appellant's trademark application No. 6058801 for 'FOREST ESSENTIALS BABY'. The learned Assistant Registrar of Trade Marks has, in fact, accepted the said objections, *vide* order dated 10.12.2025, *inter-alia* finding the marks of the appellant to be deceptively similar to that of the respondents.

10. Also highlighted is the Order dated 04.08.2023 passed in I.A. 14373/2023, wherein the respondents themselves undertook to stop using the marks 'SAUNDARYA' and 'BABY ESSENTAILS'. The appellant urges that this itself shows that the intent of the respondents was to copy all marks of the appellant, and it is only when confronted, the respondents have up their claim to at least two of the marks of the appellant.

Case of the respondents:

11. On the other hand, it is the case of the respondents that, they operate exclusively in baby care products for infants and toddlers and sell various specialised products.

12. It is asserted that the trademark 'BABY FOREST' has been registered in the favour of the respondents since June 2020. The domain name 'babyforest.in' was registered on 01.07.2020 and sales commenced from August 2022 under the 'BABY FOREST' mark. The annual sales for the financial year 2022-2023 were approximately Rs. 2.26 crores, with promotional expenses of Rs. 1.9 crores. The details of the registration of the respondents' marks are tabulated as

under:

S. No.	Trade mark	Application No.	Application Date	Class	Status
01	BABY FOREST	4548864	29/06/2020	28	Registered/Rectification proceedings pending. [C.O. (COMM.IPD-TM)-190/2023]
02	BABY FOREST	4548865	29/06/2020	35	Registered/Rectification proceedings pending. [C.O. (COMM.IPD-TM)-191/2023]
03	BABY FOREST	4548866	29/06/2020	21	Registered/Rectification proceedings pending. [C.O. (COMM.IPD-TM)-188/2023]
04	BABY FOREST	4549537	30/06/2020	25	Registered/Rectification proceedings pending. [C.O. (COMM.IPD-TM)-189/2023]
05	BABY FOREST	4549589	30/06/2020	3	Registered/Rectification proceedings pending. [C.O. (COMM.IPD-TM)-187/2023]
06	BABY FOREST	4549590	30/06/2020	5	Registered/Rectification proceedings pending. [C.O. (COMM.IPD-TM)-186/2023]

13. As far as the claim of the appellant is concerned, it is contended that the appellant's registered trademark is 'FOREST ESSENTIALS', not 'FOREST ESSENTIALS BABY' or 'FOREST ESSENTIALS-BABY ESSENTIALS'.

14. It is further highlighted that applications for registration of the marks 'FOREST ESSENTIALS BABY' and 'FOREST

ESSENTIALS-BABY ESSENTIALS' were filed by the appellant only on 09.08.2024, that is, days after the learned Single Judge refused to grant an *interim* injunction on 04.08.2023 in I.A. 14373/2023. It is asserted that these applications have been filed by the appellant only to counter the submission of the respondents that the appellant was not using the said Trade Marks and was not the registered proprietor thereof.

15. It is the case of the respondents that they have a far wider and more comprehensive range of baby care products, while the appellant's products are essentially targeted towards adults. The elements of reputation and goodwill cited by the appellant are for the main 'FOREST ESSENTIALS' range and not for the 'baby care' range of 'FOREST ESSENTIALS'.

16. It is asserted that the word 'FOREST' is a dictionary word, and no entity can be granted exclusive right to use the same for its products. Furthermore, it is claimed that the appellant has always used 'FOREST' and 'ESSENTIALS' together and therefore, has trademark registrations for the word 'FOREST ESSENTIALS' and not 'FOREST' and 'ESSENTIALS' separately. Hence, the appellant cannot claim monopoly over the word 'FOREST' in relation to cosmetics, ayurvedic products or baby care products.

17. It is contended that irrespective, there is no visual, phonetic or structural similarity between the appellant's trademark 'FOREST ESSENTIALS' and the respondents' 'BABY FOREST'. The trade dress adopted by the respondents is also completely different from that

of the appellant.

18. It is further asserted that the appellant has been changing its '*Tree*' logo from time to time and consequently, enjoys no lasting goodwill for the same. Irrespective, even a glance at the logo of the respondents, 

, shows that it is vastly different from that of the appellant's, 

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19. It is further claimed that the reliance placed by the appellant on Google search results, social media, and on its own clientele, is not enough to show widespread confusion or even likelihood thereof.

20. It is stated that the respondents only elected to stop using 'BABY ESSENTIALS' as a product category and stopped using 'SAUNDARYA' to describe its travel kit product, as a good faith gesture to resolve the disputes between the parties. Hence, the question of estoppel applying against the respondents does not arise.

Impugned Order:

21. As noted hereinabove, the learned Single Judge has dismissed the applications filed by the appellant seeking *interim* injunction against the respondents from using the marks 'BABY FOREST' and 'BABY FOREST– SOHAM OF AYURVEDA'.

22. The learned Single Judge in the Impugned Order has observed that the appellant has failed to establish proprietorship over 'FOREST

ESSENTIAL BABY' and 'FOREST ESSENTIALS-BABY ESSENTIALS', despite claiming use since 2006. The appellant has itself marketed its baby care range under the main house mark 'FOREST ESSENTIALS' and not a separate sub-brand of 'FOREST ESSENTIAL BABY' or 'FOREST ESSENTIALS-BABY ESSENTIALS'.

23. It was also held that the word 'FOREST' is generic, and the appellant could not claim proprietary rights over the said part of their Trade Mark, having not sought registration under Section 17(2) of the Trade Marks Act, 1999.

24. Applying the anti-dissection rule, the learned Single Judge opined that the appellant's uniqueness lay in using 'FOREST' and 'ESSENTIALS' together as a composite mark. It was opined that monopolies or an attempt to create monopoly must be carefully filtered, sifted and eschewed by the Court.

25. It was held that the concession given by the respondents to not use 'BABY ESSENTIALS' and 'SAUNDARYA', itself cannot be amplified to a larger concession by the respondents that their mark is deceptively similar to that of the appellant.

26. The learned Single Judge held that not only is the font used for the trade marks different, but also the stylization as well as the trade dress, the whole get up, and layout of the packaging is dissimilar. The '*Tree*' logos used by the parties was also held to be dissimilar and the material relied upon by the appellant was not held to be sufficient to cause widespread confusion.

27. The learned Single Judge further opined that the change in name of the respondent no.1 was not dishonest as it was already selling products under the mark 'BABY FOREST' since 2022.

28. The learned Single Judge placed reliance on the judgment of this Court in ***Under Armour, INC. v. Aditya Birla Fashion and Retail Ltd.,*** 2023 SCC OnLine Del 2269, to hold that it is not uncommon for a customer to cross check the origin of the products and the particular brand that they are seeking to purchase, even if they are faced with a '*state of wonderment'*. It was opined that therefore, the traditional test of '*customer of average intelligence and imperfect recollection'* must evolve to account for modern consumer behaviour. The initial interest confusion argument should be tested on the nature of the product, in this case a premium baby care product.

29. Taking into consideration the above factors, the learned Single Judge has held that the balance of convenience, therefore, would be against granting any order of injunction.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE APPELLANT:

30. Ms.Swathi Sukumar, the learned senior counsel appearing for the appellant, submits that the learned Single Judge has failed to appreciate that the appellant enjoys wide reputation and goodwill in its trade marks 'FOREST ESSENTIALS' and 'FOREST ESSENTIALS BABY'. She submits that the appellant has been using the trade mark 'FOREST ESSENTIALS' since the year 2000, and its mark 'FOREST ESSENTIALS BABY' since the year 2006, that is, much prior to the

respondents. Its large turnover and availability through various modes shows its reputation and goodwill.

31. She submits that the respondents are using deceptively similar marks for the same range of goods, namely, massage oils, soaps, lotions, etc.. She submits that as the goods are identical, it is even more necessary that the marks of the parties are different. In support, she places reliance on ***Shree Nath Heritage Liquor (P) Ltd. v. Allied Blender & Distillers (P) Ltd.***, 221 (2015) DLT 359, ***Hamdard National Foundation (India) & Anr. v. Sadar Laboratories Private Limited***, 2022 SCC OnLine Del 4523 and ***Amba Shakti Steels Ltd. v. Sequence Ferro Private Limited,*** 2024 SCC OnLine Del 6179.

32. She submits that the learned Single Judge has also applied an incorrect test by comparing the marks by keeping them side by side and by holding that the confusion must subsist for a long period of time, must be widespread, and that the customers are expected to verify the origin of products. Placing reliance on the judgment of this Court in ***Under Armour Inc v. Anish Agarwal & Anr.***, 2025 SCC OnLine Del 3784, she submits that the said test is incorrect. Reliance is also placed on the judgment of this Court in ***Google LLC. v. DRS Logistics (P) Ltd. & Ors.***, (2023) 4 HCC (Del) 515, to submit that initial confusion is sufficient to prove the misuse of the mark by the respondents.

33. She submits that, in fact, the appellant had placed on record multiple instances of actual confusion in the minds of the consumers, and in this regard, she draws our attention to the emails from Hyatt

and Oberoi Hotels; an Instagram comment from a user enquiring whether the respondent no.1 is a unit of the appellant; Google search prediction of '*is baby forest and forest essentials same*', as well as some additional instances of confusion.

34. She contends that the learned Single Judge has also incorrectly found the consumers of the appellant's products to be 'sophisticated' and 'discerning'. Placing reliance on the judgment of this Court in ***M/s. South India Beverages Pvt. Ltd. v. General Mills Marketing Inc. & Anr.,*** 2014 SCC OnLine Del 1953, she submits that, in fact, even sophisticated customers are not immune to confusion.

35. She submits that the learned Single Judge has incorrectly relied upon the decision in ***Pianotist Co. Application,*** (1906) 23 RPC 774, which was in the context of expensive musical instruments such as pianos and does not hold relevance in the present case where the goods in question are soaps, shampoos, etc..

36. She submits that the word 'FOREST' is a dominant feature of the appellant's trademark 'FOREST ESSENTIALS' and has attained a secondary meaning on account of the long standing use and marketing and advertising of the same. It is an essential part of the trade mark of the appellant and is being used for all its products.

37. She highlights that the respondents have already applied for and obtained registration of the infringing mark 'BABY FOREST'. Placing reliance on the judgments of this Court in ***Rajendra Vardichand Jagetia & Anr. v. Modern Mold Plast Limited,*** 2024 SCC OnLine Del 8322, ***Chaavi Poplai & Anr. Rajesh Chugh & Anr.,***

2019 SCC OnLine Del 7165 and ***Automatic Electric Ltd. v. R.K. Dhawan & Anr.,*** 1999 SCC OnLine Del 27, she submits that a party who has applied for a trade mark cannot dispute the inherent distinctiveness of the mark.

38. She submits that merely because some Trade Marks bearing the word 'FOREST' are registered, it does not show their use in the trade, without which it cannot be said that the said word is generic in nature. She further highlights that wherever such use was shown, it was a totally different product. She places reliance on the judgment of this Court in ***Century Traders v. Rishan Lal Duggar & Co.***, AIR 1978 Del 250 and of the Supreme Court in ***Corn Products Refining Co. v. Shangrila Food Products Ltd.***, 1959 SCC OnLine SC 11, to submit that mere registration of a mark is not sufficient to decide whether a mark is 'common to trade' and evidence of extensive use of the same must exist.

39. She further submits that the judgment of the Supreme Court in ***Pernod Ricard India Pvt. Ltd. & Anr. v. Karanveer Singh Chhabra***, 2025 SCC OnLine SC 1701, dealt with the marks 'BLENDERS PRIDE' and 'LONDON PRIDE' and would not be applicable to the present case as 'FOREST' is not a laudatory term like 'PRIDE'.

40. She submits that, in fact, the learned Assistant Registrar of Trade Marks, in the order dated 10.12.2025, while accepting the objections of the respondents to the application of the appellant for registration of its mark 'FOREST ESSENTIALS BABY', has also observed that the marks of the appellant and the respondents are

deceptively similar. She submits that the respondents are, therefore, estopped from contending to the contrary.

41. Placing reliance on the judgment of this Court in ***MAC Personal Care Pvt. Ltd. & Anr. v. Laverana GMBH & Co. KG & Anr.***, 2016 SCC OnLine Del 530, she submits that the use, if any, by the respondents of its Trade Mark can also not come to the aid of the respondents inasmuch as the adoption of the mark itself was dishonest. Again, placing reliance on the undertaking of the respondents not to use the marks 'SAUNDARYA' and 'BABY ESSENTIALS', as recorded in the order dated 04.10.2023 of the learned Single Judge, she submits that it is only when confronted, that the respondents gave up the use of the said Trade Marks, however, continued to use the Challenged Marks.

42. She further submits that the appellant has a good *prima facie* case and the balance of convenience also lies in favour of the appellant and against the respondents, for which an *interim* order of injunction ought to have been passed by the learned Single Judge.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE RESPONDENTS:

43. Mr.Jayant Mehta, the learned senior counsel appearing for the respondents, on the other hand, submits that the trade mark of the appellant is 'FOREST ESSENTIALS' which is totally distinct from the Challenged Marks.

44. He submits that the appellant has not obtained registration in the

trade marks like ‘BABY ESSENTIALS’, ‘BABY FOREST’ or ‘BABY FOREST ESSENTIALS’. It is only when this was highlighted by the respondents before the learned Single Judge, that the appellant, with a *mala fide* intent, applied for registration of its mark ‘FOREST ESSENTIALS BABY’. The same was opposed by the respondents, not on the ground of deceptive similarity but on the ground of its *mala fide* adoption. He submits that the findings of the learned Assistant Registrar are to be read in that light. He further highlights that in the legal notice sent by the appellant prior to the filing of the suit, the marks ‘FOREST ESSENTAILS BABY’ and ‘FOREST ESSENTIALS-BABY ESSENTIALS’ were not even mentioned.

45. He submits that to classify its miniscule range of baby care products, the appellant uses the term ‘Mother & Child’ on its website. Upon clicking, the webpage opens with the heading ‘Mother & Baby Care’ website. He submits that it appears that during the pendency of the suit, the appellant has changed the category name to ‘Mom & Baby’.

46. He submits that the mark of the appellant is a composite mark and the appellant cannot claim any monopoly over the word ‘FOREST’. He submits that there are over 100 registrations in Class 3 marks containing the word ‘FOREST’ which shows that it is a very commonly used word in cosmetic and skin care products to suggest that ingredients are organic or herbal or having connection with Ayurveda. He submits that the appellant has failed to establish that the public associates the word ‘FOREST’ only with the appellant in

respect of baby care products.

47. He submits that the adoption of the mark by the respondents was also *bona fide* inasmuch as the respondents deal with ayurvedic products derived from forest products. He submits that the respondents have large variety of baby care products for which it uses its mark 'BABY FOREST' and 'BABY FOREST-SOHAM OF AYURVEDA'. It also has a registration in the said marks. On the other hand, the appellant has shown no actual use of its marks 'BABY ESSENTIALS' and/or 'BABY FOREST ESSENTIALS'. The appellant has an extensive range of products targeted towards adults and out of its over 250 products, only 3-6 products are for baby care.

48. As far as evidence of actual confusion is concerned, he submits that emails from Hyatt and Oberoi Hotels are not only identically worded, but have come only after the cease and desist notice of the appellant, showing that they are procured for the purposes of the suit. Similarly, the Google search can be manipulated. He submits that, in any case, these are matters of evidence and would not prejudice the respondents at this stage.

49. He submits that the labels used for the products are entirely distinct and there is no likelihood of confusion being caused. The '*Tree*' logo of the appellant and the sapling used by the respondents are visually very different. He submits that the appellant has in fact not disclosed that it has used very different '*Tree*' logos over the years.

50. He also highlights that the appellant and the respondents deal in

super luxury sector where the customer is more sophisticated and can make out the distinction of the source of the products negating any likelihood of confusion. He submits that in addition to its main trade mark 'FOREST ESSENTIALS', the appellant also prominently uses the word 'DASAPUSHPADI' on all its products pertaining to baby care.

51. Placing reliance on the judgment of the Supreme Court in ***Wander Ltd. & Anr. v. Antox India P. Ltd.,*** 1990 Supp SCC 727, he submits that as there is no illegality in the order passed by the learned Single Judge, this Court would not, only on a re-appreciation of evidence, upset the Impugned Order.

52. He submits that much has been made of the respondents changing its corporate name. He submits that the respondents have changed its corporate name as they were already using the mark 'BABY FOREST' for their products and, therefore, no *mala fide* can be attributed to the respondents for the same. Similarly, the respondents without prejudice to their rights and contentions and only in matter of good faith had submitted before the learned Single Judge not to use the marks 'SAUNDARYA' and 'BABY ESSENTIALS', however, the same cannot be read to mean that the respondents had any *mala fide* intent in adopting these marks.

ANALYSIS AND FINDINGS:

53. At the outset, we would remind ourselves of the limited jurisdiction that we exercise as an appellate court against an *interim*

order. We are not to interfere with the exercise of discretion of the learned Single Judge and substitute it with our own discretion, except where the order of the learned Single Judge is shown to have been passed in a perverse manner ignoring the settled principles of law. In this regard, we would refer to the celebrated judgment of the Supreme Court in ***Wander Ltd.*** (supra), where the Supreme Court emphasised as under:

> ***"13.*** *On a consideration of the matter, we are afraid, the appellate bench fell into error on two important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocination as to the quality of Antox's alleged user of the trademark on which the passing-off action is founded. We shall deal with these two separately.*
>
> ***14.*** *The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be*

> *justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph : (SCR 721)*
>
> *"... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."*
>
> *The appellate judgment does not seem to defer to this principle."*

54. We would also summarise the various principles under the Trade Mark law and on the basis of which the respective claims of the parties are to be judged.

55. Where the mark of the plaintiff is registered and the claim is one of infringement of such Trade Mark, injunction must follow where the impugned mark is deceptively similar to the registered mark, especially, where it is used in relation to goods or services in respect of which the Trade Mark is registered.

56. Where the mark is not registered, the proprietor of such mark can seek an injunction on basis of passing off of the said mark, where the test to be applied would be whether the use of the complained

mark by the defendant, keeping in view the surrounding circumstances, like packaging, lable, market conditions, etc., is likely to cause confusion. While comparing the marks they are not to be placed side by side but compared by having regard to relevant surrounding circumstances. The test to be applied is from the stand point of an average purchaser with imperfect recollection. In ***Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.***, (2001) 5 SCC 73, the Supreme Court laid down the parameters for testing a claim of passing off, as under:

> *"35. Broadly stated, in an action for passing-off on the basis of unregistered trade mark generally for deciding the question of deceptive similarity the following factors are to be considered:*
>
> *(a) The nature of the marks i.e. whether the marks are word marks or label marks or composite marks i.e. both words and label works.*
>
> *(b) The degree of resembleness between the marks, phonetically similar and hence similar in idea.*
>
> *(c) The nature of the goods in respect of which they are used as trade marks.*
>
> *(d) The similarity in the nature, character and performance of the goods of the rival traders.*
>
> *(e) The class of purchasers who are likely to buy the goods bearing the marks they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and/or using the goods.*
>
> *(f) The mode of purchasing the goods or placing orders for the goods.*
>
> *(g) Any other surrounding circumstances which may be relevant in the extent of*

dissimilarity between the competing marks.

36. Weightage to be given to each of the aforesaid factors depending upon facts of each case and the same weightage cannot be given to each factor in every case."

57. The Supreme Court, in ***Pernod Ricard*** (supra), explained the differences between a claim of infringement and passing off, as under:

*"**29.** Before delving further, it is important to note that a passing off action is a common law remedy designed to protect the goodwill and reputation of a trader against misrepresentation by another, which causes or is likely to cause confusion among consumers. As observed by James L.J, in Singer Manufacturing Co v. loog, "no man is entitled to represent his goods as being the goods of another man". A passing off action applies to both registered and unregistered marks, and is rooted in the principle that one trader should not unfairly benefit from the reputation built by another. In contrast, an action for trademark infringement is a statutory remedy under the Trade Marks Act, 1999 available only in relation to registered trademarks. It is intended to safeguard the exclusive proprietary rights that registration confers.*

***29.1.** A key distinction between the two lies in the requirements of proof. In an infringement action, the plaintiff is not required to establish the distinctiveness or goodwill of the mark - registration, by itself, affords the right to seek protection. If the impugned mark is shown to be identical or deceptively similar to the registered mark, no further evidence of confusion or deception is necessary. However, in a passing off action, the plaintiff must prove: (i) the existence of goodwill or reputation in the mark, (ii) a misrepresentation made by the defendant, and*

(iii) a likelihood of damage to the plaintiff's goodwill.

29.2. *While an intent to deceive is not a necessary element in either action, passing off requires proof of a likelihood of confusion or deception. It is well settled that actual deception or damage need not be proved - the test is whether confusion is probable in the mind of the average consumer due to the similarity in the marks or the overall get-up of the goods.*

29.3. *Another key distinction is that in a passing off action, the defendant's goods need not be identical to those of the plaintiff - they may be allied or even unrelated, provided the misrepresentation is such that it affects or is likely to affect the plaintiff's business reputation. In contrast, infringement requires that the unauthorised use relate to the same or similar goods or services for which the trademark is registered.*

29.4. *Additionally, in an infringement suit, it is not necessary for the plaintiff to establish use of the mark; even a registered proprietor who has not commenced use can sue for infringement. However, in a passing off action, the plaintiff must demonstrate prior and continuous use, and that the mark has acquired distinctiveness in the minds of the public.*

29.5. *Thus, while both actions seek to prevent unfair competition and protect against consumer confusion, an action for infringement offers broader statutory protection based solely on registration and ownership. In contrast, passing off is grounded in equitable principles and imposes a higher evidentiary burden to safeguard commercial goodwill under common law."*

58. In the above judgment, the Supreme Court also explained that in case of composite marks, it is the overall impression created by the

mark, that is relevant, and the proprietor cannot claim exclusive rights over the individual components, particularly, non-distinctive or descriptive elements. It was held that the foundational principle in Trade Mark law is that the marks must be compared as a whole and not by dissecting them into individual components. This principle is commonly known as 'anti-dissection rule'. At the same time, 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. This test is called 'dominant feature test'. It was held that the dominant feature of a mark is typically identified based on factors such as its visual and phonetic prominence, placement within the mark, inherent distinctiveness, and the degree of consumer association it has generated.

59. The Supreme Court summarised the test and the legal principles governing the grant of injunction in a Trade Mark claim, as under:

> *"**36.** The Trade Marks Act, 1999 does not prescribe any rigid or exhaustive criteria for determining whether a mark is likely to deceive or cause confusion. Each case must necessarily be decided on its own facts and circumstances, with judicial precedents serving to illuminate the applicable tests and guiding principles rather than to dictate outcomes.*
>
> ***36.1.** As a general rule, a proprietor whose statutory or common law rights are infringed is entitled to seek an injunction to restrain further unlawful use. However, this remedy is not absolute. The considerations governing the grant of injunctions in trademark infringement actions broadly apply to passing off claims as*

well. That said, a fundamental distinction remains: while a registered proprietor may, upon proving infringement, seek to restrain all use of the infringing mark, a passing off action does not by itself confer an exclusive right. In appropriate cases, the court may mould relief in passing off so as to permit continued use by the defendant, provided it does not result in misrepresentation or deception.

36.2. *The grant of injunction - whether for infringement or passing off - is ultimately governed by equitable principles and is subject to the general framework applicable to proprietary rights. Where actual infringement is established, that alone may justify injunctive relief; a plaintiff is not expected to wait for further acts of defiance. As judicially observed, "the life of a trademark depends upon the promptitude with which it is vindicated."*

36.3. *The principles laid down in American Cyanamid Co. v. Ethicon Ltd. continue to guide the Courts while determining interim injunction applications in trademark cases. The following criteria are generally applied:*

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

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

(iii) Balance of convenience: The court must weigh the inconvenience or harm that may result to either party from the grant or refusal of injunction. If the refusal would likely

result in irreparable harm to the plaintiff's goodwill or mislead consumers, the balance of convenience may favor granting the injunction.

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

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

36.4. *In conclusion, the grant of an interim injunction in trademark matters requires the court to consider multiple interrelated factors: prima facie case, likelihood of confusion, relative merits of the parties' claims, balance of convenience, risk of irreparable harm, and the public interest. These considerations operate cumulatively, and the absence of any one of these may be sufficient to decline interim relief."*

60. Applying the above test to the facts of the present case, the marks of the appellant are 'FOREST ESSENTIALS', 'FOREST ESSENTIALS BABY' and 'FOREST ESSENTIALS-BABY ESSENTIALS' while the Trade Mark of the respondents is 'BABY FOREST'. We reproduce the same hereinbelow:

Appellant's marks	Respondent's marks
FOREST ESSENTIALS	BABY FOREST
FOREST ESSENTIALS BABY	
FOREST ESSENTIALS- BABY ESSENTIALS	
	

61. Both, the appellant and the respondents, deal in ayurvedic products.

62. The mark of the appellant is a composite mark, with none of the two words, 'forest' or 'essential', qualifying as a dominant feature of the said composite mark. Therefore, the anti-dissection rule must be applied. Furthermore, it was the own case of the appellant before the learned Registrar of Trade Marks at the time of the registration of its mark 'FOREST ESSENTIAL', that the use of the said words together was a unique juxtaposition that rendered the mark to be inherently distinctive.

63. Similarly, the mark of the respondents is 'BABY FOREST', again a composite mark. Hence, the registration of the mark 'BABY FOREST' by the respondents cannot be treated a bar on the respondents to contend that the word 'FOREST' is generic. The judgments of this Court in ***Rajendra*** (supra), ***Chaavi Poplai*** (supra), ***Automatic Electric Ltd.*** (supra) and ***Century Traders*** (supra); and of the Supreme Court in ***Corn Products*** (supra) cannot come to the aid of

the appellant.

64. Even otherwise, 'FOREST' being a dictionary word, to claim any monopoly over the same, stringent evidence test of having required a secondary meaning in the same would be required from the plaintiff/appellant.

65. Furthermore, the adoption of the mark by the respondents, at least at this stage, cannot also be said to be *mala fide* or dishonest. The respondents claim to be dealing with baby products which are ayurvedic and derived from the forest. Merely because it gave up its claim for 'SOUNDARYA' and/or 'BABY ESSENTIALS' or changed its corporate name, in our view, at least *prima facie*, not sufficient to attribute dishonest intention to the respondents for the adoption of its mark. The judgment of this Court in ***MAC Personal Care*** (supra) therefore is not applicable to the facts of the present case.

66. Applying the test of a person with imperfect recollection, we do not find the marks of the appellant and the respondents to be deceptively similar.

67. While in the present case, the appellant has stated that there is proof of actual deception and confusion by the use of the mark by the respondents, in our view, the said evidence is to be tested at the time of final hearing of the suit. In making our above observation, we are mindful of the timing of the letters from the Hyatt and Oberoi Hotels; the Instagram comment and the response on the Google Search Engine. We, therefore, are of the opinion that the judgments of this Court in ***Amba Shakti*** (supra), ***Hamdard National Foundation***

(supra), ***South India Beverages*** (supra) and ***Shree Nath Heritage*** (supra) cannot come to the aid of the appellant.

68. The order of the learned Assistant Registrar of Trade Marks is also to be read in the context of the objection that was raised by the respondents for opposing the application of the appellant seeking registration of its mark 'FOREST ESSENTIALS BABY'. The respondents had laid emphasis on the *mala fide* of the appellant in applying for the same only to defeat the rights of the respondents in the suit.

69. As far as the '*Tree*' logo and overall packaging are concerned, we again do not find the same to be sufficient to, at least at this stage where we are to apply the trinity test of good *prima facie* case, balance of convenience and irreparable harm and injury, to be made out by the appellant for grant of injunction. Furthermore, applying the test of ***Wander Ltd.*** (supra), no case for interference with the order of the learned Single Judge is made out by the appellant.

70. Having said the above, we must herein observe that we do agree with the learned senior counsel for the appellant that the learned Single Judge has erred in defining the '*initial confusion test*'. In fact, a Division Bench of this Court in ***Under Armour Inc.,*** (supra) has already adversely commented upon the same by observing as under:

> *"**102.** It is apparent from the above paragraph that the learned Single Judge accepted that the customer who comes across the impugned marks may be faced with "transient wonderment", but being an informed customer would proceed to find out the differences between the products. In our*

view, if the customer looking at the impugned marks associates the same with the appellant's marks even though for a brief period, the appellant's trademarks would be infringed on the plain reading of Section 29(1)/Section 29(2) and even Section 29(4) of the TM Act. The duration of the confusion in the minds of the customer is not material. The fact that the customer is confused, even if it be momentarily, would be sufficient to establish infringement of trademark. Thus, the question to be considered by the court was essentially whether a customer looking at the impugned trademarks would be led to believe that the same is associated with the appellant's trademark, even it be for a brief moment. The fact that he may on a closer examination of products and enquiries find that the impugned trademarks are not associated with the appellant's trademarks would not take away from the fact that the impugned marks bear a similarity with the appellants trade mark, which led to the confusion. Similarly, if a customer of average intelligence and imperfect recollection, who seeks the appellant's product UNDER ARMOUR is for a brief moment deceived to think the respondent's product as associated with the appellants mark, the appellants action for infringement has to be sustained as the test of likelihood of confusion would stand satisfied.

103. *As noted above, in some cases, it may be sufficient for a new entrant to merely attract the customers of a well-known brand to look at its product. In some cases, it would be enough for a new entrant to get its foot in the door. It is not necessary that the customer must necessarily be deceived in buying the product under a junior mark for the registered senior mark to be infringed. If such the initial interest is elicited by any similarity with the well-known trademark, the requirement of Section 29 of the Act would be satisfied."*

71. However, we do not find that the adoption of the above test by the learned Single Judge itself is sufficient to upset the impugned order, as we do agree with the final conclusion of the learned Single Judge on facts of the case.

72. For the above stated reasons, we do not find any merit in the present appeal. The same is, accordingly, dismissed. Pending applications are disposed of.

73. We make it clear that any and all observations made by us hereinabove are only *prima facie* in nature and shall, in no manner, affect the adjudication of the suit.

NAVIN CHAWLA, J.

MADHU JAIN, J.

FEBRUARY 27, 2026/ns/**ik**