IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

BEFORE:
The Hon'ble Justice Ravi Krishan Kapur

IA NO: GA-COM/1/2024,
GA-COM/6/2025
IP-COM/7/2024

IN THE MATTER OF :

METRAVI INSTRUMENTS PRIVATE LIMITED
VS
DHANBAD LAB INSTRUMENTS INDIA PRIVATE LIMITED AND ORS.

For the petitioner	: Mr. Susrea Mitra, Adv. Mr. Bhupendra Gupta, Adv. Mr. Harsh Tiwari, Adv. Mr. Samriddha Sen, Adv. Ms. Ojasvi Gupta, Adv. Mr. Anwar Hossain, Adv.
For the respondents	: Mr. Sudhir Sinha, Adv. Ms. Priti Jain, Adv.
Judgment on	: 25.02.2025

RAVI KRISHAN KAPUR, J.:

1. This is an application seeking interlocutory reliefs in a suit for passing off.
2. The petitioner is a company incorporated on 25 March 2009 and is *inter-alia* engaged in the business of marketing, selling and distribution of digital clamp testers, multi meter electrical, electronic test and measuring instruments, ready off the shelf scientific and industrial instruments and equipments of premium quality. Originally, the predecessor in interest of the petitioner, Mr. Vikram Raj Bhansali through his firm M/s Arun Enterprises coined and adopted the mark METRAVI as far back as on 1 July 1998 for its products in class 9 and has since been extensively, continuously and uninterruptedly using the same.
3. Subsequently, the predecessor in interest of the petitioner had also obtained registration in respect of the word mark METRAVI on 1 April 1998 and the

same remains valid and subsisting. With the passage of time, the products and services of the petitioner gained immense goodwill which led to the incorporation of the petitioner company in 2009. On 17 December 2015, M/s Arun Enterprises sold, transferred, conveyed and assigned the trademark METRAVI together with its goodwill by executing a deed of assignment. Thereafter, the petitioner applied for transfer and ownership of the mark and has since assigned the same in its favour. As such, METRAVI has been the house mark of the petitioner since 12 August 1999. Subsequently, the petitioner has also made substantial investments towards advertising and promotion of their goods bearing the above mark.

4. The respondent no 1 is a company incorporated on 16 November 2016 and is engaged in similar business of manufacturing, selling and distribution of identical products as that of the petitioner. Initially, the respondent no.1 was a distributor of PCE Instruments Limited. In or about January 2024, the petitioner came to learn that, the respondent no 1 has obtained registration of the impugned mark 'METERIVA' on a proposed to be used basis under class 9 in respect of similar products as that those manufactured, distributed and sold by the petitioner.

5. It is alleged by the petitioner that the impugned mark METERIVA is phonetically, structurally and visually similar to that of the petitioner's mark METRAVI. The trade dress and get up of the impugned product is also deceptively similar to the products being sold by the petitioner. The impugned products are also being sold on e-commerce websites of the respondent nos. 2 and 3. Consequentially, there is scope for confusion and deception. It is further alleged that the respondent no 1 was fully aware of the existence of the petitioner company and its business and had approached the petitioner in

June 2022 and October 2023 respectively for distributing the petitioner's products. In fact, the respondent no 1 had also purchased some products of the petitioner for sale. The mark of the petitioner is distinctive and has earned immense goodwill and reputation amongst customers. In selling the goods under the impugned mark, the respondents are also trying to ride on the goodwill and reputation of the petitioner by intentionally adopting a phonetically, structurally and visually deceptively similar mark as that of the petitioner. In support of such contentions, the petitioner relies on *Lakshmikant V. Patel vs. Chetanbhai Shah & Anr. (2002) 3 SCC 65, Regency Plywood Industries Pvt. Ltd. vs. Chowdhury Enterprise & Ors. (2024) SCC OnLine Cal 10655, Madhu Food Products vs. Surya Processed Food Pvt. Ltd. (2024) SCC OnLine Del 5818 (DB)* and *Amba Shakti Steels Ltd. vs. Sequence Ferror Pvt. Ltd. (2024) SCC OnLine Del 6179 (DB).*

6. On behalf of the respondent no 1 it is contended that, the petitioner has falsely asserted that the petitioner does not possess any intangible assets. The trademark and goodwill being in the nature of intangible property is not reflected in the financial statements of the petitioner. The petitioner has also suppressed the consideration for assignment of the mark. In any event, both the rival products are dissimilar to each other. There is neither phonetic nor visual similarity which warrants any interference in this proceeding. The term MET is common to both the petitioner and respondent no.1's mark and there can be no exclusivity which can be claimed in respect thereof. In support of such contentions, the respondents rely on *J.R. Kapoor vs. Micronix India (1994) SUPPL 3 SCC 215, F. Hoffman LA Roche & Co. Ltd. vs. Geoffrey Manners & Co. Pvt. Ltd. (1969) 2 SCC 716, Astrazeneca UK Ltd. vs. Orchid*

Chemical & Pharmaceuticals Ltd. [2007] (34) PTC 469 DB and *Subway IP LLC vs. Infinity Food & Ors. (2023) SCC OnLine Del 150.*

7. In order to decide whether a word is phonetically similar or not, diverse factors need to be taken into consideration i.e. whether the recollection of such trade names are likely to be faltered or confused with or whether the pronunciation of such word would likely to be indistinct or imperfectly heard. The fact that individuals could enunciate words in a variety of distortions, slurs or even mispronounce the words must also be weighed in deciding the question of similarity between word marks. Resemblances and differences tend to create a certain degree of impression in the mind which customers may relate to with regard to the respective goods or products when used. Such impressions may lead to deception and confusion amongst consumers at large.

8. The two competing trade names involved in this case have mere interchange of letters. Misrepresentation lies at the heart of an action for passing off. Both parties are operating in the same filed of activity. In such circumstances, there was an obligation on the respondent no.1 coming into the same market to ensure that its products are not confused with that of another. The respondent no 1 was fully aware of the existence of the petitioner's mark prior to the launch of the impugned mark. There were business dealings between the two parties. Such prior dealings are documented. It was only when such business dealings unfavourably ended between the parties did the respondent no 1 apply for registration of the impugned mark under class 9 for similar products. *Prima facie,* when pronounced or a mere glance at the competing marks as a whole, there lies a real possibility of phonetic and visual deception and confusion.

9. In *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd. (2001) 5 SCC 73* it has been held as follows:

> *"18. We are unable to agree with the aforesaid observations in Dyechem case [(2000) 5 SCC 573]. As far as this Court is concerned, the decisions in the last four decades have clearly laid down that what has to be seen in the case of a passing-off action is the similarity between the competing marks and to determine whether there is likelihood of deception or causing confusion. This is evident from the decisions of this Court in the cases of National Sewing Thread Co. Ltd. case [(1953) 1 SCC 794 : AIR 1953 SC 357] , Corn Products Refining Co. case [AIR 1960 SC 142 : (1960) 1 SCR 968] , Amritdhara Pharmacy case [Amritdhara Pharmacy v. Satya Deo Gupta, AIR 1963 SC 449] , Durga Dutt Sharma case [Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories, AIR 1965 SC 980] , and Hoffmann-La Roche & Co. Ltd. case [Hoffmann-La Roche & Co. Ltd. v. Geoffrey Manner & Co. (P) Ltd., (1969) 2 SCC 716] . Having come to the conclusion, in our opinion incorrectly, that the difference in essential features is relevant, this Court in S.M. Dyechem Ltd vs Cadbury (India) Ltd, (2000) 5 SCC 573, sought to examine the difference in the two marks 'piknik' and 'picnic'. It applied three tests, they being: (1) is there any special aspect of the common feature which has been copied? (2) mode in which the parts are put together differently i.e. whether dissimilarity of the part or parts is enough to make the whole thing dissimilar, and (3) whether, when there are common elements, should one not pay more regard to the parts which are not common, while at the same time not disregarding the common parts? In examining the marks, keeping the aforesaid three tests in mind, it came to the conclusion, seeing the manner in which the two words were written and the peculiarity of the script and concluded (at SCC p. 597, para 39) that 'the above three dissimilarities have to be given more importance than the phonetic similarity or the similarity in the use of the word picnic for piknik'.*
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> *19. With respect, we are unable to agree that the principle of phonetic similarity has to be jettisoned when the manner in which the competing words are written is different and the conclusion so arrived at is clearly contrary to the binding precedent of this Court in Amritdhara case [AIR 1963 SC 449] where the phonetic similarity was applied by judging the two competing marks. Similarly, in Durga Dutt Sharma case [AIR 1965 SC 980] it was observed that: (AIR p. 990, para 28)*
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> *"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 plaintiffs 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."*

10. In *Laxmikant V. Patel vs. Chetanbhai Shah (2002) 3 SCC 65* it has been held as follows:

> *10. A person may sell his goods or deliver his services such as in case of a profession under a trading name or style. With the lapse of time such business or services associated with a person acquire a reputation or goodwill which becomes a property which is protected by courts. A competitor initiating sale of goods or services in the same name or by imitating that name results in injury to the business of one who has the property in that name. The law does not permit any one to carry on his business in such a way as would persuade the customers or clients in believing that the goods or services belonging to someone else are his or are associated therewith. It does not matter whether the latter person does so fraudulently or otherwise. The reasons are two. Firstly, honesty and fair play are, and ought to be, the basic policies in the world of business. Secondly, when a person adopts or intends to adopt a name in connection with his business or services which already belongs to someone else it results in confusion and has propensity of diverting the customers and clients of someone else to himself and thereby resulting in injury.*

11. The petitioner is also the prior user and adopter of the mark which has also been registered in its favour. The respondent no.1 had adopted the impugned mark only in 2022. Confusion and deception regarding the source and origin of the goods under the impugned mark is highly probable and there is every likelihood for such confusion to happen amongst innocent customers. Upon a bare perusal of the two competing trademarks, the interchange of the same letters of the two marks and similar trade dress used against the similar products in the same class, creates a real possibility for deception and confusion. The explanation offered by the respondent no.1 in choosing the impugned mark is unconvincing and unacceptable. Non-disclosure of the consideration for assignment of the mark by the petitioner is irrelevant and inconsequential. *Prima facie*, the impugned mark “METERIVA” is phonetically, structurally and visually deceptively similar to the mark of the petitioner.

12. The decisions cited on behalf of the respondent no.1 are distinguishable and inapposite. The decision in *Subway IP LLC vs. Infinity Food & Ors. (Supra)* dealt with the question whether 'SUBERB' was phonetically similar to 'SUBWAY'. In this background, it was held that no exclusivity or monopoly could be claimed over two syllable words of which the first syllable is 'SUB'. On the contrary, in the facts of this case the two words taken as a whole alongwith surrounding circumstances tend to cause confusion or deception. Similarly in *J.R. Kapoor v. Micronix India (1994) SUPPL. 3 SCC 215* it was found that no exclusivity could be claimed over the prefix 'MICRO' and the suffix was dissimilar phonetically and otherwise. As such, this decision is also distinguishable.

13. In view of the above, the petitioner has been able to establish a strong case on merits. The balance of convenience and irreparable are also in favour of orders being passed as prayed for by the petitioner.

14. In such circumstances, the *ad interim* order dated 8 April 2024 stands confirmed. GA-COM 1 of 2024 in I.P (Com) 7 of 2024 stands allowed. There shall be an order in terms of the prayer (a) of the Notice of Motion. Consequently, GA 6 of 2024 for vacating of the order dated 8 April 2024 stands dismissed.

(RAVI KRISHAN KAPUR, J.)