

Order below Exhibit-5

- (1) This is an application filed by the Plaintiff under Order-39 Rule-1 & 2 read with Section-151 of the Code of Civil Procedure, 1908 for seeking temporary injunction restraining defendants from infringement of registered trademark of the plaintiff SHREE GANESH LIVE ALOOPURI & SHREE GANESH LIVE ALOOPURI & RASAVALA KHAMAN and restraining him from using trademark of the plaintiff until final disposal of this suit.
- (2) The notices were issued by the Court and it were duly served to the defendant. The plaintiff has submitted document vide mark- 3/A to 3/U. The defendant has submitted his written statement vide Exh. 11.

Submission on behalf of plaintiff.

- (3) Heard the Ld. Advocate for the plaintiff. He has argued as per application for temporary injunction. He further submitted the plaintiff has been prior user of such mark since 2009 by name of SHREE GANESH NASHTA CENTER and the logo has been also used by defendant whereas the defendant has been using it since 27.12.2022 and the defendant is deceptively using GANESH LIVE ALOOPURI AND RASAVALA KHAMAN and GANESH ALOOPURI and the copyright work' and thereby passing off of the trademark and copyright of the plaintiff. He further contended that there is, prima facie, case in favour of the plaintiff against defendants and the balance of convenience is also in his favour. He further contended the plaintiff would suffer irreparable loss if the injunction

would not be granted in favour of plaintiff. Hence prayed for temporary injunction.

Submission on behalf of defendants.

- (4) The Ld. Advocate for the defendant has submitted that the defendant doesn't pass off the trademark of the plaintiff for the business but the mark used by the defendant is GANESH LIVE ALOOPURI AND RASAVALA KHAMAN and GANESH ALOOPURI which is not similar or identical or deceptively similar. The defendant has not challenged registered trademark of the plaintiff namely GANESH LIVE ALOOPURI AND RASAVALA KHAMAN and GANESH ALOOPURI. He further submitted that it cannot be prima-facie said that the defendant is infringing the copyright and trademark of the plaintiff. Hence prayed for rejecting present application.

Principles governing grant of temporary injunction

- (5) This is an application for temporary injunction and there are three basic principles for granting or refusing to grant temporary injunction i.e. prima facie case in favour of the party seeking injunction, balance of convenience in favour of such person and last there must be a irreparable loss which are likely to be caused to party if injunction is not granted to such person. And an injunction being an equitable remedy is always at the discretion of the court. However, such discretion must be based on sound judicial principles and guided by rules of Equity and the peculiar facts and circumstances of the case. Apart from three basic principles, the court is also required to see the conduct of

party seeking equitable relief of temporary injunction since the granting of injunction is an equitable relief and is drastic or serious order. There are two basic maxims of equity which are important to be considered at the time of deciding injunction application which are “He who seeks equity must do equity” and “He comes to equity must come with clean hand”.

Analysis

(6) The Hon'ble Supreme Court in the case of "Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd." reported in (2001) 5 SCC 73 has partly overruled the pronouncement of M/s. S. M. Dyechem Ltd (supra) and observed and held as under:

18. We are unable to agree with the aforesaid observations in *Dychem 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* [AIR 1963 SC 449] , *Durga Dutt Sharma case* [AIR 1965 SC 980] and *Hoffmann-La Roche & Co. Ltd. case* [(1969) 2 SCC 716] . Having come to the conclusion, in our opinion incorrectly, that the difference in essential features is relevant, this Court in *Dychem case* [(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”.

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)

“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.”

20. Lastly, in *Dyechem case* [(2000) 5 SCC 573] it was observed in para 54 as under: (SCC p. 600)

“54. As to scope of a buyer being deceived, in a passing-off action, the following principles have to be borne in mind. Lord Romer, L.J. has said in *Payton & Co. v. Snelling, Lampard & Co.* [(1900) 17 RPC 48 : 16 TLR 56 (CA)] that it is a

misconception to refer to the confusion that can be created upon an ignorant customer. The kind of customer that the courts ought to think of in these cases is the *customer who knows* the distinguishing characteristics of the *plaintiff's goods*, those characteristics which distinguish his goods from other goods in the market so far as relates to general characteristics. If he does not know that, he is not a customer whose views can properly be regarded by the Court. (See the cases quoted in *National Sewing Thread & Co. Ltd. v. James Chadwick & Bros. Ltd.* [AIR 1948 Mad 481 : (1948) 1 MLJ 303] which was a passing-off action.) In *Schweppes case* [*Schweppes Ltd. v. Gibbens*, (1905) 22 RPC 601 (HL)] Lord Halsbury said, if a person is so careless that he does not look and does not treat the label fairly but takes the bottle without sufficient consideration and without reading what is written very plainly indeed up the face of the label, you cannot say he is deceived.”

These observations appear to us to be contrary to the decision of this Court in *Amritdhara case* [AIR 1963 SC 449] where it was observed that the products will be purchased by both villagers and townfolk, literate as well as illiterate and the question has to be approached from the point of view of a man of average intelligence and imperfect recollection. A trade may relate to goods largely sold to illiterate or badly educated persons. The purchaser in India cannot be equated with a purchaser of goods in England. While we agree that in trade mark matters, it is necessary to go into the question of comparable strength, the decision on merits in *Dyechem case* [(2000) 5 SCC 573] does not, in our opinion, lay down correct law and we hold accordingly.

(7) The Hon'ble Supreme Court in "Pernod Ricard India Private Limited And Another Versus Karanveer Singh

Chhabra" reported in 2025 SCC Online SC 1701 has held 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.*"

36.4. 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.

41. It is a settled principle of trademark law that deceptive similarity does not necessitate exact imitation. What is material is the likelihood of confusion or association in the minds of consumers arising from an overall resemblance between the competing marks. The applicable standard is that of an average consumer with imperfect recollection.

42. While comparing rival marks, Courts must assess the marks in their entirety, rather than dissecting composite trademarks into isolated components. The dominant feature of a mark may assist in crossing the preliminary threshold of analysis, but the ultimate inquiry must focus on the overall impression created by the mark - especially in the context of the relevant goods, trade channels, and target consumers. The proper test is not to place the two marks side by side to identify dissimilarities, but to determine whether the impugned mark, when viewed independently, is likely to create an impression of association or common origin in the mind of the average consumer. Even if a particular component of a mark lacks inherent distinctiveness, its imitation may still amount to infringement if it constitutes an essential and distinctive feature of the composite mark as a whole.

43. Section 17(1) of the Trade Marks Act, 1999 grants exclusive rights only in respect of the mark as registered. Section 17(2) excludes protection for common or non-distinctive elements unless such elements have acquired secondary meaning. Sections 27(2) and 29 preserve the right to institute passing off actions and define the contours of infringement, respectively. Notably, Section 29(3) presumes confusion only where identical marks are used for identical goods - a condition not met in the present case as the marks.

44. Applying the settled legal standards - including the anti-dissection rule, the overall similarity test, and the perspective of an average consumer - we *prima facie* find no deceptive similarity between the competing marks that would give rise to confusion.

45. In the present case, the marks - 'BLENDERS PRIDE' and 'LONDON PRIDE' - are clearly not identical. Though the products are similar, the branding, packaging, and trade dress of each are materially distinct. The Commercial Court and High Court have rightly held that the term 'PRIDE' is *publici juris*, and commonly used in the liquor industry. The dominant components - 'BLENDERS', 'IMPERIAL BLUE', and 'LONDON' - are entirely different both visually and phonetically, producing distinct overall impressions.

(8) Looking to the materials on record and submissions made on behalf of both the parties, it appears that the present suit filed by the plaintiff is for seeking for perpetual injunction restraining defendants from committing passing off of trademark and copyright of the plaintiff. The trademark of the plaintiff is not registered one and the suit of the plaintiff for seeking perpetual injunction restraining defendant from committing passing off his trademark and copyright. It is undisputed fact of this case that the defendant has been doing his business by his trademark SHREE GANESH LIVE ALOOPURI & SHREE GANESH LIVE ALOOPURI & RASAVALA KHAMAN and the defendants has been doing their business in the name of GANESH LIVE ALOOPURI AND RASAVALA KHAMAN and GANESH ALOOPURI. It is also

undisputed that both the plaintiff and defendant are selling similar product.

(9) It is well settled that there cannot be any monopoly over the word 'Ganesh'. The plaintiff is using SHREE GANESH LIVE ALOOPURI whereas the defendant is also using GANESH LIVE ALOOPURI AND RASAVALA KHAMAN. It is well-settled that in case of infringement or passing off of any intellectual properties, the appropriate remedy is the injunction restraining the defendants from committing infringement or passing off. In the present case as discuss above defendant is having registered trademark of GANESH LIVE ALOOPURI AND RASAVALA KHAMAN. The question whether the plaintiff herein is the prior user of said trademark is a question to determined at the time of trial on the basis of evidence lead by both the parties.

(10) So in view of the aforesaid fact this Court is of the opinion that the plaintiff has failed to establish prima-facie case in the present case against the defendant. It is well-settled that in case of infringement of any intellectual properties, the appropriate remedy is the injunction restraining the defendants from committing infringement. However, in the absence of prima-facie case, no temporary injunction can be granted in favour of the plaintiff. The Ld. Advocate for the plaintiff has relied on some of the authorities in support of his arguments which are; 1. S. Syed Mohideen vs. P. Sulochana Bai reported in 2016 (2) SCC 683, 2. Dhariwal Industries Ltd. vs. M.S.S. Foods

Products reported in 2005 (3) SCC 63, (3) Satyam Infoway vs. Siffynet Solution Pvt. Ltd. reported in 2004 (6) SCC 145, 4. Laxmikant V. Patel vs. Chetanbhai Shah reported in 2002 (3) SCC 65, 5. T. V. Venugopal vs. Ushodaya Enterprises Ltd. reported in 2011 (4) SCC 85 wherein the principles relating to passing off action and refusing to grant temporary injunction has been laid down. It is also observed and held that though passing off is an essence an action based on deceit, fraud is not a necessary element of a right of action and that the defendant's state of mind is wholly irrelevant to the existence of a cause of action for passing off, if, otherwise the defendant has imitated or adopted the plaintiff's mark.

(11) The Hon'ble Apex court in the case of "Kashi Math Samsthan v. Srimad Sudhindra Thirtha Swamy" reported in (2010) 1 SCC 689 has held as under;

16. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury

if no injunction order is granted. Therefore, keeping this principle in mind, let us now see whether the appellant has been able to prove prima facie case to get an order of injunction during the pendency of the two appeals in the High Court.

(12) So, in view of such position of law, this court declines to grant temporary injunction in favour of the plaintiff against the defendants since the plaintiff has failed to establish prima facie case in his favour. Hence I hereby pass following order in the interest of justice.

ORDER

- The application filed by the plaintiff vide Exhibit-5 is hereby rejected.
- Cost shall be the cost in the cause of the suit.

Pronounced and signed in open court on February 24th, 2026.

Date : 24.02.2026
Place: Surat

[Amitkumar Narendrabhai Dave]
Commercial court & 8th Addl. District
Judge Surat
UIC No.GJ00807.