
ONE RIVER, TWO CROCODILES: TERRITORIALITY, COEXISTENCE, AND THE IDEA - EXPRESSION DIVIDE IN LACOSTE VS. CROCODILE INTERNATIONAL PRIVATE LTD.

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I. INTRODUCTION

The battle between two clothing companies that have created a worldwide identity around a single reptile is one of the few trademark cases in the world that has lasted as long or traversed as many territories. On one side stands Lacoste, the French sportswear label founded by tennis champion Rene Lacoste, whose right-facing crocodile has adorned polo shirts since the late 1920s. On the other stands Crocodile International, a Singapore-founded textile enterprise that has used a left-facing crocodile device, together with the word “Crocodile” rendered in its founder’s own handwriting, since the late 1940s.¹ The two marks, mirror images of one another, have collided in courtrooms across Asia for over two decades.

In India, the dispute reached its first definitive resolution on 14 August 2024, when a Single Judge of the Delhi High Court delivered a judgment in a suit that had been instituted as far back as 2001.² That judgment was in turn, tested on cross-appeals before a Division Bench, which delivered its own ruling on 9 March 2026.³ Read together, the two decisions offer a rare, layered study of Indian trademark and copyright law: the meaning of “deceptive similarity,” the demanding trinity test for passing off, the territorial limits of private coexistence agreements, and the contested boundary between an unprotectable idea and a protectable expression under the doctrine of merger. This comment traces the dispute from its historical origins through both tiers of Indian adjudication, and closes with a brief comparative look at

¹ Crocodile International, About Us, <https://www.crocodileinternational.com/content/4-about-us> (last visited Aug. 27, 2026).

² *Lacoste & Anr. v. Crocodile International Pte Ltd & Anr.*, CS(COMM) 1550/2016, 2024:DHC:6150 (Del. H.C. Aug. 14, 2024) (India).

³ *Lacoste & Anr. v. Crocodile International Pte Ltd & Anr.*, RFA(OS)(COMM) 18/2024 & RFA(OS)(COMM) 10/2025 (Del. H.C. Mar. 9, 2026) (India).

how the same rivalry has fared abroad.

II. ORIGINS OF THE TWO MARKS

A. Lacoste and the Birth of “Le Crocodile”

Rene Lacoste, a seven-time Grand Slam champion and one-time World No. 1, earned the nickname “The Crocodile” for his relentless style of play. In the late 1920s his friend, the graphic designer Robert George, drew a crocodile emblem that Lacoste had embroidered onto his tennis blazer. In 1933, Lacoste partnered with textile manufacturer Andre Gillier to mass-produce a short-sleeved cotton pique shirt bearing this crocodile device - the garment that would become the house’s signature product and the origin of the Lacoste brand.⁴ George later assigned his rights in the artistic work to the Lacoste enterprise, a fact that would become material decades later when the ownership of the underlying copyright came to be tested before the Delhi High Court.

B. Crocodile International and the Singapore Textile Trade

Crocodile International traces its origins to a textile business established in Singapore in 1947 by Dato Dr. Tan Hian Tsin.⁵ The enterprise adopted the name “Crocodile” for goods that were as stiff as crocodile-skin and its founder devised a left-facing, fierce-looking crocodile device accompanied by the word “Crocodile” written in his own hand a composite mark combining device and script. In India, Tan applied to register this composite mark on 12 June 1952 (Registration No. 154397, Class 25, for shirts and singlets), a filing that significantly predates

Lacoste’s own Indian applications. Crucially, however, Crocodile International never obtained a copyright registration for its device in India, a gap that would prove decisive when the copyright question was later litigated.

For decades the two enterprises coexisted without serious friction, largely because their commercial footprints did not meaningfully overlap. That changed as both brands expanded internationally through the second half of the twentieth century, bringing their respective crocodile devices into direct competition across multiple Asian markets - the commercial

⁴ Battle For An Iconic Logo: Lacoste v. Crocodile, Mondaq (Sept. 4, 2024), <https://www.mondaq.com/india/trademark/1511726/battle-for-an-iconic-logo-lacoste-v-crocodile>. ⁵ Crocodile International, About Us, *supra* note 1.

reality that ultimately produced the 1983 coexistence framework discussed in Part III.

C. India-Specific Registrations

Lacoste applied to register its composite “LACOSTE + crocodile device” mark (No. 400265) and its crocodile device standing alone (No. 400267) in India on 19 January 1983, in Class 25, on a “proposed to be used” basis. Commercial use in India followed a decade later, in October 1993. During the pendency of the present proceedings, Lacoste additionally secured copyright registration for the artistic work comprising its crocodile device, under No. 62692/2002, recording first publication in France in 1927 and in India in 1992. This copyright registration would anchor Lacoste’s claim to exclusive reproduction rights in the artwork under the Copyright Act, 1957.

Crocodile International for its part, relied on its earlier 1952 composite registration and asserted honest continuous commercial use of its “crocodile family of marks” in India from 1997 onward. The friction that gave rise to the suit arose specifically because, sometime after 1997, Crocodile International began using a standalone version of its crocodile device - shorn of the accompanying word “Crocodile” - a device that, absent the wordmark, bore a far closer visual resemblance to Lacoste’s own standalone crocodile. It was this wordless device, annexed to the plaint as “Annexure-A,” that became the central object of litigation.

Lacoste instituted its infringement suit in 2001, invoking trademark infringement, copyright infringement, and passing off, and seeking a permanent injunction, rendition of accounts, and costs.⁵ The matter would not be finally decided at the first instance for another twenty-three years.

III. THE 1983 CO-EXISTENCE AGREEMENT AND THE 1985 LETTER

As both enterprises expanded across Asia, their respective marks came into conflict in several markets, prompting the parties to negotiate a formal settlement. On 17 June 1983, Lacoste and an associate of the Crocodile group, Li Seng Min Company Ltd., executed a Co-Existence Agreement (“the 1983 Agreement”). Article I of that Agreement expressly enumerated five territories Taiwan, Singapore, Indonesia, Malaysia and Brunei - within which the parties agreed their respective crocodile devices could coexist without either side treating the other’s

⁵ CS(COMM) 1550/2016, 2024:DHC:6150, *supra* note 2.

use as infringing. Article II obliged each party to assist the other in registering the marks listed in Schedules A and B within those territories, and to refrain from using or registering any device mark other than those specifically scheduled. The Agreement also contained a general clause expressing willingness to “cooperate in other parts of the world wherever possible.”

India was conspicuously absent from the Article I list. Two years later, on 22 August 1985, Crocodile International sent Lacoste a letter stating that it would not oppose Lacoste’s trademark applications in Korea, and that if a conflict arose there, it would furnish a consent letter in Lacoste’s favour; the letter further offered to extend similar consent letters to India, Bangladesh, and Pakistan, should Lacoste require them.⁶ For several years thereafter, the two brands continued to operate without renewed litigation, and Crocodile International later relied on this correspondence together with related communications dated 13 February 1989 and 15 June 1990 - as the foundation of its principal defence in the Indian proceedings: that the spirit of the 1983 Agreement had, by 1985, been extended to cover India as well.

IV. PROCEDURAL POSTURE AND ISSUES BEFORE THE SINGLE JUDGE

The suit came to be finally decided by Justice Sanjeev Narula on 14 August 2024. Before reaching the merits, the Court disposed of Crocodile International’s objection to territorial jurisdiction, holding that the suit was maintainable in Delhi both under Section 62(2) of the Copyright Act, 1957⁸ since Plaintiff No. 2 carried on business within the Court’s jurisdiction and under Section 20(c) of the Code of Civil Procedure, 1908,⁷ given that Crocodile International’s Indian counterpart, Crocodile Products Pvt. Ltd., offered the impugned goods for sale through retail outlets in Delhi.

On the merits, the judgment framed and answered a series of discrete issues, which this comment addresses in turn in Parts V through VII below: (i) whether Crocodile International’s standalone device infringed Lacoste’s registered trademark; (ii) whether Lacoste could additionally succeed on passing off; (iii) whether the same device infringed Lacoste’s copyright in the artistic work; (iv) whether the 1983 Agreement and 1985 Letter operated as a valid defence for use of the mark in India; (v) the quantum of relief, including rendition of accounts; and (vi) costs. The Court’s findings on each issue, evaluated cumulatively, produced

⁶ Battle of Two Crocodiles, DivinaLaw (Sept. 23, 2024), <https://www.divinalaw.com/dose-of-law/battle-of-twocrocodiles/>.⁸

The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

⁷ The Code of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908 (India)

a judgment that was partially, but not wholly, in Lacoste's favour a mixed outcome that itself became a live issue before the Division Bench, discussed in Part VIII.

V. ISSUE ONE: TRADEMARK INFRINGEMENT

The statutory threshold for infringement turns on the concept of "deceptive similarity," defined under Section 2(1)(h) of the Trade Marks Act, 1999⁸ as a mark that "so nearly resembles that other mark as likely to deceive or cause confusion." Distilled into its operative elements, the provision requires: (a) that the marks be used in relation to the same or similar description of goods; (b) that the impugned mark closely resemble the registered mark; and (c) that the resemblance be such as is likely to confuse the average consumer.

The Court found all three elements satisfied. Both devices were used on identical goods apparel falling within Class 25. Applying the settled "anti-dissection" approach comparing marks as a whole rather than feature-by-feature the Court held that the overall silhouette, posture, and aggressive stance of the two crocodile devices were strikingly similar, and that the sole point of difference, the mirrored orientation (Lacoste's reptile facing right, Crocodile International's facing left), was unlikely to register with an average purchaser possessed of only imperfect recollection. On this basis, the Annexure-A device was held deceptively similar to Lacoste's registered mark under Section 2(1)(d) of the earlier Trade and Merchandise Marks Act, 1958⁹ (the statute in force when Lacoste's 1983 applications were filed), read consistently with the identical definition subsequently carried into Section 2(1)(h) of the 1999 Act. Relief followed under Section 28, which confers on a registered proprietor the exclusive right to use the mark and to seek redress for infringement, read with Section 135, which prescribes the reliefs injunction, damages or accounts of profits, and delivery-up available in an infringement suit.¹² The Court accordingly held that Crocodile International's use of the standalone device infringed Lacoste's registered trademark.

VI. ISSUE TWO: PASSING OFF

Lacoste additionally pressed a claim in passing off a common-law remedy that is, in important respects, broader than statutory infringement. Where infringement protects only the registered

⁸ The Trade Marks Act, 1999, No. 47, Acts of Parliament, 1999 (India).

⁹ The Trade and Merchandise Marks Act, 1958, No. 43, Acts of Parliament, 1958 (India). ¹² The Trade Marks Act, 1999, supra note 6, sec 28, 135.

right in a mark, passing off protects the trader's accumulated goodwill and reputation, and is available even to an unregistered proprietor. The applicable test in India is the "classical trinity" articulated by Lord Oliver in the House of Lords' decision in *Reckitt & Colman Products Ltd. v. Borden Inc.*¹⁰ popularly the "Jif Lemon" case and expressly adopted by the Supreme Court of India in *Laxmikant V. Patel v. Chetanbhai Shah*.¹¹ The trinity requires proof of three cumulative elements: (i) goodwill or reputation attached to the claimant's goods in the mind of the purchasing public; (ii) a misrepresentation by the defendant likely to lead the public to believe its goods are those of the claimant; and (iii) resulting or likely damage to that goodwill. Because the three elements are cumulative, the failure of any single limb is fatal to the claim as a whole.

On the facts, the Court held that Lacoste had failed to discharge its burden on the very first limb. To succeed, Lacoste needed to establish that it possessed a substantial and demonstrable reputation in the Indian market at, or reasonably close to, the point in time when Crocodile International began using the impugned standalone device in India that is, from around 1997. The evidentiary record was found wanting: Lacoste had not placed on record cogent proof, such as sales figures, advertising expenditure, or market surveys, of an established Indian reputation predating Crocodile International's use. Because the threshold requirement of goodwill was not made out, the Court did not find it necessary to examine misrepresentation or damage in any depth, and the passing off claim was dismissed a striking outcome given that the very same conduct had already been held to infringe Lacoste's registered trademark.

VII. ISSUE THREE: COPYRIGHT INFRINGEMENT AND THE DOCTRINE OF MERGER (SINGLE JUDGE)

It is elementary that copyright protects the particular expression of an idea, not the idea itself. Where an idea can be expressed only in one, or a very limited number of ways, the idea and its expression are said to "merge," and the expression is denied exclusive copyright protection for to protect the expression in such a case would be, in substance, to grant a monopoly over the underlying idea. The Single Judge invoked this doctrine of merger, drawing on the reasoning of the United States Court of Appeals for the Ninth Circuit in *Herbert Rosenthal Jewelry Corp. v. Kalpakian*,¹² a decision frequently cited in Indian jurisprudence on the idea-expression

¹⁰ *Reckitt & Colman Products Ltd. v. Borden Inc.*, [1990] 1 W.L.R. 491 (H.L.).

¹¹ *Laxmikant V. Patel v. Chetanbhai Shah*, (2002) 3 S.C.C. 65 (India).

¹² *Herbert Rosenthal Jewelry Corp. v. Kalpakian*, 446 F.2d 738 (9th Cir. 1971).

dichotomy.

Applying the doctrine, the Court reasoned that both parties' devices sprang from a common, narrow underlying concept a "ferocious crocodile" rendered in an aggressive stance, possessing standard reptilian features such as a curved tail, limbs, an open jaw with pointed teeth, scales, and claws. Because a realistic depiction of an aggressive crocodile was found to admit of only limited creative variation, the Court treated Crocodile International's Annexure-A device as an independent artistic expression of that same idea, rather than a copy of Lacoste's specific expression of it. While the Court expressly recognised the validity and subsistence of Lacoste's copyright registration in its own artwork, it declined to award damages or find infringement, holding the doctrine of merger to bar relief. This finding arguably the most doctrinally contestable part of the Single Judge's judgment would not survive appeal, as discussed in Part VIII below.

VIII. THE COEXISTENCE DEFENCE, RENDITION OF ACCOUNTS, AND COSTS (SINGLE JUDGE)

Crocodile International's central defence that the 1983 Agreement and 1985 Letter permitted concurrent use in India was rejected on two independent grounds. First, the Court applied the settled principle of territoriality in trademark law: rights (and correlatively, defences) granted or recognised in one jurisdiction do not automatically travel to another absent an express agreement to that effect. Article I of the 1983 Agreement named five specific territories; India's deliberate omission, the Court held, could not be cured by the Agreement's general aspiration to "cooperate wherever possible" a clause of hortatory, not binding, character.

Second, and independently, the Court held the 1985 Letter incapable of constituting a binding coexistence arrangement for India because it was a unilateral communication. Under basic principles of Indian contract law, an enforceable agreement requires mutual consent: an offer met by acceptance and no evidence was found of any reciprocal, unequivocal acceptance by Lacoste of the terms proposed in that letter. A proposal that is never met with clear acceptance remains just that: a proposal, not a contract. The coexistence defence therefore failed on both territorial and contractual grounds.

Having found infringement, the Court ordered rendition of accounts under Section 135 of the

Trade Marks Act, 1999,¹³ directing Crocodile International to render an account of profits earned from the sale of goods bearing the impugned device in India from August 1998 the approximate date of its commercial launch within six weeks, with a retired judge, Justice (Retd.) Amar Nath, appointed as Local Commissioner to scrutinise the financial records.

Costs of the suit were awarded in Lacoste's favour.

IX. THE DIVISION BENCH APPEAL (9 MARCH 2026)

Both sides appealed. Crocodile International, in RFA(OS)(COMM) 18/2024, challenged the finding of trademark infringement and the grant of injunction; Lacoste, in RFA(OS)(COMM) 10/2025, challenged the dismissal of its copyright and passing off claims and the denial of damages. The cross-appeals were heard together and decided by a Division Bench of Justices C. Hari Shankar and Om Prakash Shukla on 9 March 2026.¹⁴

On trademark infringement and passing off, the Division Bench affirmed the Single Judge in full. It agreed that the 1983 Agreement's territorial confinement to five named countries excluded India, and that the 1985 Letter, remaining a unilateral communication never met with clear bilateral acceptance, could not bind the parties in India. It likewise upheld the dismissal of the passing off claim, agreeing that Lacoste had not proved goodwill in the Indian market prior to the relevant date the first and threshold limb of the classical trinity.¹⁵

On copyright, however, the Division Bench reversed. It applied the doctrine of originality: a work independently created and reduced to material form by its author here, Robert George's design, later assigned to Lacoste attracts copyright protection upon creation, without more. The Bench held that the Single Judge's merger analysis rested on a false premise: a "ferocious crocodile" is *not* confined to one or a handful of visual treatments it may be rendered realistically, minimalistically, or abstractly, from any number of angles and postures, as illustrated by the very fact that Crocodile International itself maintains a separate, materially different composite logo for other purposes.¹⁶ Examining the two works side by side, the Bench found that Crocodile International's Annexure-A device replicated Lacoste's specific

¹³ The Trade Marks Act, 1999, *supra* note 6, sec 135.

¹⁴ RFA(OS)(COMM) 18/2024 & RFA(OS)(COMM) 10/2025, *supra* note 3.

¹⁵ Reckitt & Colman Products Ltd. v. Borden Inc., *supra* note 8; Laxmikant V. Patel v. Chetanbhai Shah, *supra* note 9.

¹⁶ Cf. Herbert Rosenthal Jewelry Corp. v. Kalpakian, *supra* note 11 (distinguished on the ground that a realistic jewelled-bee pin, unlike a crocodile device, admits of negligible creative variation).

expressive choices the precise posture, the curvature of the tail, and the architecture of the open jaw to a degree inconsistent with independent creation, and accordingly held the copyright infringed. Rendition of accounts was affirmed; however, the Single Judge's costs order was set aside, the Division Bench directing the parties to bear their own costs in light of the litigation protracted, twenty-three-year duration and the mixed outcome (passing off having failed), invoking the discretion conferred by Section 35 of the Code of Civil Procedure, 1908.¹⁷

X. CAN TWO RIVALS SHARE ONE LOGO? A COMPARATIVE NOTE

The dispute raises a question of wider commercial significance: may two enterprises trading in the same line of goods lawfully use similar animal or device marks? Indian jurisprudence, as applied here, answers cautiously in the affirmative but only within narrow limits. Coexistence is permissible where the marks carry genuine distinguishing features sufficient to avoid consumer confusion, where each party holds bona fide, independently-earned rights predating the conflict, or where the parties have negotiated an enforceable coexistence agreement that precisely delimits the marks and territories covered. What the *Lacoste* litigation demonstrates is that Indian courts will not extend such an arrangement by inference: any coexistence defence must rest on an agreement that is clear, specific, and demonstrably mutual; ambiguity is resolved against the party invoking the defence.

The rivalry between these two houses is not confined to India. Litigation has arisen in Japan, Singapore, China, Myanmar, and the Philippines, among other jurisdictions, with outcomes differing markedly by forum. An early Japanese proceeding in 1971 favoured Lacoste, finding the marks distinguishable from a series of disputes in Singapore in the early 1980s precipitated the very 1983 Agreement discussed above.¹⁸ More recently, the Philippine Supreme Court, in a decision rendered on 6 November 2023, ruled in favour of Crocodile International, finding no confusing similarity between the marks on the facts and evidentiary record before it.¹⁹ These divergent results are not inconsistent as a matter of law; they illustrate, rather, that trademark rights are inherently territorial, and that infringement is assessed jurisdiction-by-jurisdiction on local registration, use, and evidence precisely the principle that anchored the Delhi High Court's reasoning on the scope of the 1983 Agreement.

¹⁷ The Code of Civil Procedure, 1908, *supra* note 7, sec 35.

¹⁸ *Battle of Two Crocodiles*, *supra* note 5.

¹⁹ *Lacoste S.A. v. Crocodile International Pte Ltd.*, G.R. No. 223270 (S.C., Nov. 6, 2023) (Phil.)

XI. CONCLUSION

Twenty-three years after suit, and across two tiers of the Delhi High Court, the *Lacoste v. Crocodile International* litigation has produced a considered and, on balance, coherent resolution: Crocodile International may continue to use its composite mark the crocodile device together with the word “Crocodile” in its founder’s script consistent with its own independent 1952 Indian registration, but is permanently restrained from using the standalone device that so closely mirrors Lacoste’s registered and copyrighted crocodile.²⁰ The case offers three durable lessons for brand owners: that coexistence agreements must expressly and unambiguously address every territory of present or future commercial interest; that goodwill for passing off purposes must be evidenced, not merely asserted, and as early as possible in a new market; and that the doctrine of merger in copyright law, while a genuine limit on protection for common source-motifs, will not shield a defendant who has replicated a claimant’s specific creative choices rather than independently expressed the same underlying idea.

²⁰ CS(COMM) 1550/2016, 2024:DHC:6150, *supra* note 2; RFA(OS)(COMM) 18/2024 & RFA(OS)(COMM) 10/2025, *supra* note 3.

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