
DECEPTIVE SIMILARITY AND THE GLOBAL CONFUSION DOCTRINE: AN EVOLVING STANDARD IN TRADEMARK LAW

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ABSTRACT

At the core of trademark case law is the doctrine of confusing or misleading similarity, which is intended to protect both the consumer from confusion and the owner from losing their goodwill in the distinctive marks. Essentially, the doctrine has two purposes: protecting the public interest in consumer confusion in the marketplace and protecting the proprietary interest of trademark owners from being misconstrued or diluted. Courts have historically assessed any similarity in marks by looking at different factors separately and in isolation. The traditional approach involved assessing visual similarities, phonetic similarities, and conceptual similarities individually. But there has been an overall shift toward an analysis of overall confusion or global appreciation, a framework requiring an overall assessment of two competing marks in a commercial environment based on what is viewed through the eyes of an average consumer, over the last 40 years.

This change, spurred by changes to elongated English and European trademark jurisprudence, is evidence of an awareness of the complicated, competitive and visually crowded marketplace where consumers reside. Under the global confusion doctrine, the marks concerned are not separately sliced and diced and considered in isolation, but rather in entirety alongside factors such as the nature of the goods or services, the class of consumers, the mode of purchase, and the surrounding circumstances of trade.

This article will conduct a doctrinal study of the principle of misleading similarity as encapsulated under Section 11(1) and 11(2) of the Trade Marks Act, 1999, meaning the excising of the judicial interpretations, and then impose the same in the wider study of the overall confusion doctrine. It will critically reflect whether the Indian courts, in practice, promote this analysis model, and if so, whether this is doctrinally to be consistent and practical. The article will comparably study developments in the United Kingdom after the birth of the Trade Marks Act 1994 (UK) and when instead applying the

law under the case law develop under the Court of Justice of the European Union (CJEU) wherein the global appreciation test has always been used.

Using a method of doctrinal methodology and case law synthesis, this article contends that while Indian courts have exhibited an increasingly willingness to adopt holistic evaluative structures in trademark disputes, a significant degree of inconsistency remains in both reasoning and implementation. When taken in totality, the inconsistency across Indian cases is further compounded by the absence of empirically-grounded, evidence-designed judicial processes to determine consumer confusion in respect of expanding product categories, overlapping trade channels, and advanced cognitive processes representing consumer behaviour. Ultimately, this article calls for a doctrinal clarification and rationalization of Indian law in this regard — one that draws on comparative jurisprudence and is aware of the empirical realities of Indian markets today.

Keywords: Trademark Infringement, Deceptive Similarity, Global Confusion, Consumer Protection, Trade Marks Act, Comparative Jurisprudence

I. Introduction

Trademarks serve not just as commercial symbols, but also as assurances of origin, quality, and reputation in the market. Their legal protection is based on a key concern: preventing consumer deception and unfair competition. This goal is clear in the doctrines of deceptive similarity and likelihood of confusion, which protect consumers from mistaken associations and help keep proprietary marks distinct.

Traditionally, Indian courts borrowed principles from English common law when examining similarity. They analyzed the visual, phonetic, and structural elements of the marks separately. However, as market interactions grew more complex and transnational branding became common, there was a need for a more holistic and context-sensitive approach. The global confusion doctrine, first explained in European law and gaining influence in Indian cases, requires a complete evaluation of the marks, the nature of the goods, consumer habits, and the market context to determine if confusion is likely.

This article provides a doctrinal and comparative analysis of these principles. It traces their historical development, current application, and the ongoing challenges in Indian trademark law.

II. The Doctrine of Deceptive Similarity

The statutory basis of deceptive similarity in India can be found in Section 2(1)(h) of the Trade Marks Act, 1999, which defines a mark that is deceptively similar to another mark “if it so nearly resembles that other mark as to be likely to deceive or cause confusion.” This provision incorporates a probabilistic standard — it is the likelihood of confusion, as opposed to the actual, that demonstrates infringement.

Historically, the courts have considered deceptive similarity in India in a manner analogous to that undertaken by English courts, employing a segmented approach that considered visual, phonetic, and structural elements in isolation. In cases such as *Amritdhara Pharmacy v. Satya Deo Gupta*¹, the courts would established that slight phonetic similarities (especially in the context of similar products and illiterate or semi-literate consumers) will suffice to determine that deceptive similarity exists.

In this matter, the parties were in dispute over the registration of the trademark Lakshmandhara, which a respondent applied for in connection with a medicinal preparation. The appellant claimed that it was deceptively similar to their trademark Amritdhara, which had become well known. The appellant posted several arguments in support of their claim to prove every likelihood of confusion, especially since it was the same product marketed in overlapping markets. The Notice of Opposition was provided and after examining the evidence, the Registrar of Trade Marks determined that although there was sufficient similarities that could lead to confusion were present, it was determined that the parties had long concurrently used the trademark in question, and the appellant was aware of the respondent's mark when applying for registration, permitted the registration of Lakshmandhara solely in Uttar Pradesh under the special circumstances in Section 10(2) of the Trade Marks Act, 1940. Both parties appealed; the High Court found phonetic differences between the names that ruled out any likelihood of confusion, therefore permitting registration of the trademark on a nationwide scale. Upon further appeal, the Supreme Court overturned this conclusion and concluded that any differences between the trademarks could only be understood by way of an overall impression without too great of an analysis, while considering the nature of the goods, the class of purchasers, namely, uneducated villagers, and the surrounding circumstances of trade. This was a case of deceptive similarity and confusion was likely for ordinary consumers. However,

¹ AIR 1963 SC 449

taking into account the honest concurrent use, and the particular circumstances of the case, it restored the decision of the Registrar allowing for registration but limiting sales to Uttar Pradesh.

The Coming of the Global Confusion Doctrine

The weaknesses of a purely composite approach were soon identified, especially as branding strategies began to include composite marks, logos and packaging. The European Court of Justice decision *Sabel BV v. Puma AG*² was a watershed moment, by advancing the notion of a global appreciation of the two marks, taking into account visual, aural and conceptual similarities, the distinctiveness of the earlier mark and the relevant public's perception.

Indian case law was beginning to incorporate this level of nuance in seminal decisions like *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*³, where the Supreme Court suggested that a "holistic assessment" take into account several factors - the nature of the goods, the class of purchasers and the surrounding circumstances.

III. The Components of Deceptive Similarity

There are a number of factors that may go into determining the analysis of deceptive similarity of trademarks. These include:

Visual Similarity: The visual aspects of trademarks - shapes, colors, fonts, and designs can also be important in the analysis of deceptive similarity, that an infringing trademark will confuse consumers if they are visually deceptively similar to the infringing trademark.

Phonetic Similarity: The Phonetic similarity of trademarks is how the trademark sounds verbally spoken. Infringers create brands or slogans that sound almost identical to existing trademarks in attempts to confuse consumers.

Conceptual Similarity: On the contrary, conceptual similarity is the idea behind the trademark. If the visual or phonetic but the concept is close enough this can still confuse consumers.

To illustrate this, consider the landmark case *Starbucks Corporation v. Sardarbuksh Coffee*

² (1998) RPC 199

³ (2001) 5 SCC 73

& Co.⁴, Starbucks registered their word mark 'STARBUCKS' and logo as a trademark in India in 2001. The Defendants began their business in 2015 as 'Sardarbuksh Coffee & Co.' The logo of Sardarbuksh included a turban-clad man's face with wavy lines on either side and wrapped inside a circular black ribbon. Based on this example, the Delhi High Court held that an ordinary intelligent person could be confused thus was deceptively similar. In this case, the logo of the Defendants is visually, phonetically, and conceptually identical to the mark of the Plaintiff.

IV. Statutory Basis

Section 2(1)(h) of the Trade Marks Act, 1999 defines a mark as deceptively similar if:

“it so nearly resembles that other mark as to be likely to deceive or cause confusion.”

This broad standard focuses on the likelihood of confusion rather than proof of actual confusion, a principle consistently endorsed by Indian courts.

Section 11 of the Trade Marks Act, 1999

Section 11 of the 1999 Act codifies relative grounds for refusal of registration.

Sub-section (1) prohibits the registration if it is **identical with or deceptively similar** to an earlier trademark for similar or identical goods or services, and if the use of the subsequent mark would **likely cause confusion or a likelihood of association**.

Sub-section (2) extends protection to well-known marks even for dissimilar goods or services, provided the use of the later mark would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier mark. This provision reflects the growing recognition of brand identity as transcending conventional product categories in modern commerce.

V. ESTABLISHMENT OF DECEPTIVE SIMILARITY:

In *Cadila HealthCare Ltd. v. Cadila Pharmaceutical Ltd*⁵, the Supreme Court established a

⁴ CS (COMM) 1007/2018

⁵ (2001) 5 SCC 73

standard for analyzing "Deceptive Similarity." The following are the factors to consider when assessing deceptive similarity:

- i. The nature of the mark (whether word, label, or composite mark).
- ii. The degree of resemblance between the two marks.
- iii. The nature of the goods (i.e., services for which the Trade mark is used).
- iv. The degree of care and intelligence of the purchaser in purchasing the goods or services.
- v. The manner in which the purchaser purchases or orders the goods.
- vi. Any similarities between the nature, performance, and characteristics of the goods of the competing traders.

In this case, the Supreme Court has provided certain parameters to be followed while dealing with issues of Deceptive Similarity. The parties in the case are successors of the Cadila Group. The conflict arose because the Defendant was selling a medicine called 'Falcitab' that bears a striking resemblance to the medicine manufactured by the plaintiff called 'Falcigo,' which were used for the same purpose - to cure the same disease. As a result, the plaintiff sought an injunction on the grounds that the names were causing confusion to the public. The defendant countered that the prefix "Falci" was derived from the name of the disease i.e., Falcipharam malaria.

The court declared that it is imperative that confusion arising out of trademarks relating to medicine, pharmaceuticals, and drug companies shall be strictly forbidden. Furthermore, The court made statements to the effect that brand names that were phonetically identical would be considered deceptively similar.

VI. Comparative Jurisprudence: United Kingdom and European Union

In the United Kingdom, Section 5 of the Trade Marks Act, 1994, establishes relative grounds for refusal similar to Section 11 of the Indian Act. The courts in the United Kingdom apply a global appreciation test, where the similarity of marks and goods and the likelihood of confusion is considered as a whole. In *Reed Executive Plc v. Reed Business Information*

*Ltd.*⁶, the court emphasized the necessity of evaluating the marks as a whole, rather than as dissection.

In *Sabel BV v. Puma AG*⁷, the European Court of Justice (ECJ) stated that the assessment of likelihood of confusion must weigh a number of interconnected factors: the degree of similarity between marks, the degree of similarity between the goods or services, and the distinctive character of the earlier mark. This integrated standard has been reaffirmed in numerous subsequent ECJ decisions and is central to European trademark jurisprudence.

VI. Judicial Precedents

*Shri Pankaj Goel vs M/S. Dabur India Ltd.*⁸

The Delhi High Court in dealt with *Shri Pankaj Goel vs M/S. Dabur India Ltd.* the issue of deceptive similarity under Trademark law. Dabur is the owner of the well-known digestive tablet mark HAJMOLA. Dabur obtained an ex-parte injunction against the Appellants mark RASMOLA, because there were phonetic and visual similarities that would confuse consumers, particularly children.

The Appellant argued that it had prior use of the mark since 1989, had registration for the mark since 1996, and that "MOLA" is a common suffix in the trade under Section 27(1) of the Trade Marks Act, 1999. The Appellant also claimed that Dabur had acquiesced. The Appellant cited other marks such as SATMOLA and SIDHMOLA which were allowed by Dabur as examples of reasonable acquiescence. The Court stated however, that it was not considering whether the Appellants mark was deceptively similar to HAJMOLA, but rather whether the average intelligence of the unwary purchaser with imperfect recollection would be deceived by the overall similarity.

The Court held that registration is no defence to a passing off action under Section 27(2) of the Trade Marks Act, 1999. The Court ruled in the same breath, that making a delay in taking action against those who infringe a trademark, or tolerating the infringements by only insignificant ones, is not the same as an abandonment. The Court supported its injunction on a strong public policy ground. The Court stated that any deceptive similarity of a product that is in the food

⁶ (2004) RPC 40

⁷ (1998) RPC 199 (ECJ)

⁸ FAO (OS) 82 OF 2008

category should be restrained because the consumer interests should be protected, as would deter any wrongdoing if the dishonest appropriation was not occurring.

***Max Healthcare Institute Ltd. v. Sahrudya Health Care Pvt. Ltd.*⁹,**

In this case, Melbourne credited a dispute between the two parties, which involved an infringement of a registered trademark. The Plaintiff, Max Healthcare (Max), made use of and owned registered trademarks containing the word "MAX" for their healthcare services received via a joint venture and several business transfers. The Defendant operated hospitals under the names "MAXCURE/MAXKURE" which lead to the Plaintiff to file suit.

The Court determined that "MAX" formed an important and distinctive part of the Plaintiff's trademarks and that the Plaintiff had built a considerable level of goodwill in respect of "MAX" in the healthcare sector. The Court also emphasized that trademark infringement is not only determined by identifying visual (look), structural (spelling), and phonetic (sound) similarities, but also by considering the type of services, the intended consumers, and the general impression in the mind of the public who would consume those services. The Court also made explicit that it would not adopt a narrow "on-paper" analysis and hold paramount the determination of any potential consumer confusion from the perspective of an average consumer, with imperfect memory. Consequently, the use of "MAX" by the Defendant was deceptively similar, and amounted to infringement.

***Galderma India Pvt. Ltd. v. M.K. Cosmetics*¹⁰**

In a suit filed by Galderma India Pvt. Ltd. before the Bombay High Court, an ad-interim injunction restraining the defendants, from selling counterfeit goods under the registered trade mark CETAPHIL of the plaintiff was issued. The plaintiff alleged that the defendant was selling counterfeit products comprising the plaintiff's trademark and artistic work without any authorization, and without any required details of the product, including bar code, MRP, and batch numbers.

Justice Sharmila U. Deshmukh examined the visual comparison of the defendants products with the plaintiff's and concluded that the products were prima facie counterfeit products, being

⁹ 2017 SCC OnLine Del 12031

¹⁰ (2025 SCC OnLine Bom 2590)

slavish imitations of the plaintiff company's mark and packaging. The Court noted that the action of the defendants not only infringed upon the plaintiff's registered trademark and artistic work, but resulted in the likelihood of confusion and wrongful association of the defendants' products with the plaintiff's products.

Considering Galderma's established presence in the market and its proprietary rights, the Court awarded interim relief in order to prevent irreparable harm in both Mumbai and New Delhi and appointed Court Receivers to assist in the matter. The matter was set for hearing on 30 July 2025 and the ad-interim injunction would remain in effect until that date.

The decision and order in this matter demonstrates the draconian approach to counterfeiting and deceptive similarity, and prompt protective action against infringing goods afforded to brand proprietors.

VIII. Remedies in cases of Deceptive Similarity

1. Injunction

Injunctive relief is one of the most powerful and frequently granted remedies in cases of deceptive similarity. Pursuant to **Section 135** of the Trade Marks Act, 1999, the owner of a registered trade mark may seek and obtain both a temporary and permanent injunction against the infringer restraining it from using the deceptively similar mark. In the early stages of the litigation, it is possible for a plaintiff to obtain a temporary or interim injunction to prevent further misuse of the mark by the defendant pending the determination of the case. When the case has been finally heard and if infringement is established, the Court may grant a permanent injunction against the defendant never to use the offending mark again. The purpose of an injunction is to stop further harm to the reputation, goodwill and distinctiveness of the registered trade mark.

2. Damages and Account of Profits

An injured party may also seek monetary remedies by way of damages or account of profits, under **Section 135(1)(ii)** of the Trade Marks Act. Damages can be awarded to compensate the mark owner for the actual loss suffered because of the infringement. Alternatively, the infringer can be ordered to provide an account of profits. This account requires that the infringer disclose the profits he/she made from the unauthorized use of the trademark and pay those profits over

to the trademark owner. It is important to note that the plaintiff must elect damages only or account of profits; both cannot be sought at the same time. Both remedies are designed to ensure that the infringer is not unjustly enriched by trading upon the goodwill of another.

3. Delivery Up and Destruction of Goods

In order to further limit the spread or use of deceptively similar trademarks, an order for delivery up or destruction of infringing goods and materials may also be ordered by the courts. This includes all goods that are affected by the trademark including packaging, advertisements, stationery, signage, and any other materials that incorporate the infringing mark. This is a remedy provided for under **Section 135(1)(iii)**. This remedy allows the court to remove infringing goods from the marketplace, as a means of preventing potential confusion and/or deception amongst consumers. Delivery up and/or destruction is an important aspect to protecting the identity and value of a registered trademark.

4. Rectification of the Trade Mark Register

If the infringer has already registered the deceptively similar trade mark, the injured party may apply for a rectification of the trade mark register under **Section 57** of the Trade Marks Act. This entails making a request to either the Registrar of Trademarks or the High Court to have the infringing trade mark removed or amended in the register. A rectification action is necessary to ensure that the infringer cannot assert any lawful claims over a trade mark that infringes on the established rights of the true trade mark owner.

5. Criminal Remedies for Willful Infringement

In addition to the civil remedies available, it is also possible to take criminal action against an infringing party that is knowingly and fraudulently using deceptively similar trade marks. **Sections 103 to 105** of the Trade Marks Act provide for penalties for offenses such as making a false trade mark, selling goods with a false trade mark, and possessing goods for sale with a false trade mark. The sanctions could include imprisonment for up to three years, financial compensation of up to ₹2 lakhs, or both. Criminal remedies should be particularly useful where counterfeiting or knowing and deliberate infringement take place on a larger scale since it serves as a more significant deterrent.

6. Costs Award

The Court can, in addition to damages, also award the successful party the costs of litigation, especially where it has found willful or malicious infringement. Costs can include court filing fees, advocates fees and disbursements. An award of costs not only provides the Plaintiff with recoverable legal costs but also dissuades a Defendant from pursuing frivolous defenses or unnecessarily using the legal process.

7. Administrative and Platform Remedies

Traditionally, trademark owners have been limited to bringing formal proceedings, but there are certainly administrative steps that can and should be taken to protect any trademark rights. This might include submitting takedown notices to online marketplaces such as Amazon or Flipkart, seeking the removal of infringing listings, or having recourse through a regulatory body, advertising council, or trade association. Where serious domain name disputes are in issue, a remedy can also be sought according to the Uniform Domain-Name Dispute-Resolution Policy (UDRP) or its counterpart, INDRP. These mechanisms are particularly suited for infringing parties in online or e-commerce situations.

IX. Current Concerns and Doctrinal Criticism

While the doctrine is being applied clearly, the practical application of false similarity and the confusion doctrine in India is very difficult. Confusion is very subjective and results in inconsistent decisions within the judiciary. Indian courts still predominantly consider phonetic similarity more than visual and conceptual similarity.

In the era of digital transverse commerce, likelihood of confusion has become increasingly complex. Brands today build up reputation through digital and online presence, meaning marks might conflict still there is no current trade. The Indian courts have cautiously recognised trans-border reputation in *N.R. Dongre v. Whirlpool Corporation*¹¹ and began to acknowledge trans-border reputation as a possibility, however, this is dependent on the specific case.

Lastly, it is concerning how little consumer surveys are utilized in Indian trademark adjudication, a ubiquitous tool used to evaluate consumer reaction in the UK and EU legal

¹¹ 1996 PTC (16) 583 (Del)

systems. With such evidence, the objectivity of confusion in India could be enormously improved.

X. Conclusion

The global confusion and deceptive similarity doctrines represent old cornerstones of trademark law, protecting both consumer interest and the commercial goodwill of trademark owners. Accordingly, Section 11 of the Trade Marks Act, 1999, which Indian courts have construed to preserve a robust protection against registration of conflicting marks, offers a powerful legal mechanism. The world is a complex, multilingual, and increasingly digital marketplace, and legislative or judicial refinement is warranted now. Along these lines, codifying the global appreciation principle, facilitating the admission of empirical consumer evidence and clarifying trans-border reputation tests, would serve to bring greater consistency, objectivity and effectiveness to Indian trademark law.