
THE PSYCHOLOGY OF TRADEMARK CONFUSION: A BEHAVIOURAL APPROACH TO CONSUMER PROTECTION AND BRAND PROTECTION

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ABSTRACT

Trademark law is fundamentally concerned with preventing consumer confusion, yet confusion itself is deeply rooted in human cognition and behaviour. Consumers rarely evaluate competing trademarks through meticulous legal comparison; instead, they rely on memory, perception, recognition, association, and cognitive shortcuts when making purchasing decisions. This article examines trademark confusion through a behavioural lens, connecting the Indian legal standard of the “average consumer” and “imperfect recollection” with contemporary insights from consumer psychology. Through an analysis of leading decisions including *Amritdhara Pharmacy v. Satya Deo Gupta*, *Parle Products (P) Ltd. v. J.P. & Co.*, and *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*, it explores how phonetic similarity, visual resemblance, brand familiarity, first impressions, and purchasing context influence consumer decision-making. The article further considers how digital marketplaces and algorithm-driven consumer interactions are reshaping the traditional landscape of trademark confusion. It argues that trademark law serves a dual purpose: protecting the goodwill and distinctiveness of brands while safeguarding consumers from misleading commercial associations. Ultimately, the article advocates a more context-sensitive and behaviourally informed understanding of the “average consumer,” demonstrating that understanding why consumers become confused is indispensable to determining when the law should intervene.

INTRODUCTION

Trademark law is often described as a law of signs: words, logos, shapes, colours and other indicators that distinguish one trader's goods or services from another's. Yet behind every trademark dispute lies something far more human the mind of the consumer.

The legal question of whether two marks are "confusingly similar" is, in substance, a question about perception, memory and decision-making. A consumer rarely approaches a shelf, website or advertisement as a trademark lawyer would. Consumers do not ordinarily dissect words letter by letter, compare competing logos side by side or consciously analyse the etymology of a brand. They recognise, remember and associate. Sometimes, those mental processes produce an entirely reasonable purchasing decision; at other times, they produce confusion.

This makes trademark confusion an inherently behavioural phenomenon. The law therefore protects not merely a commercial symbol, but the reliability of the mental association between a mark and its source.

FROM TRADEMARK SIMILARITY TO CONSUMER PSYCHOLOGY

Section 29 of the Trade Marks Act, 1999¹ recognises infringement where the use of an identical or deceptively similar mark is likely to cause confusion or association on the part of the public. The statutory language is significant: the law is concerned with the probable response of the consumer, rather than merely the visual or linguistic resemblance between two marks.

The Supreme Court's jurisprudence reflects this consumer-centred approach. In *Amritdhara Pharmacy v. Satya Deo Gupta*,² the Court famously evaluated competing marks from the perspective of a person of "average intelligence and imperfect recollection". The Court refused to dissect the marks "Amritdhara" and "Lakshmandhara" into individual components and instead considered their overall structural and phonetic similarity in the circumstances in which consumers encountered them.

This principle is remarkably compatible with contemporary cognitive science. Human memory is reconstructive rather than photographic. A consumer may retain the general appearance, sound or conceptual identity of a brand without remembering every detail. Consequently, a

¹ Trade Marks Act, 1999, No. 47 of 1999, § 29 (India)

² *Amritdhara Pharmacy v. Satya Deo Gupta*, AIR 1963 SC 449 (India)

mark may be recognised as familiar even when its precise features cannot be recalled.

The legal fiction of the “average consumer” therefore has a psychological foundation: the consumer is neither exceptionally careless nor exceptionally meticulous.

IMPERFECT RECOLLECTION AND THE ARCHITECTURE OF MEMORY

Trademark confusion can occur because consumers remember brands through salient cues. A distinctive word, colour, logo, package shape or sound may become associated with a particular commercial source. Research in consumer psychology demonstrates that distinctive brand cues can facilitate the learning and retrieval of information about products.³

This explains why two marks need not be identical to generate confusion. Similarity can operate through memory associations.

Consider a hypothetical situation involving two beverage brands: “ZIVA” and “ZIVAQ”, both using similar typography and packaging. A consumer who has previously encountered “ZIVA” may not consciously compare the two marks when making a rapid purchasing decision. Instead, the visual and phonetic cues may activate an existing memory association. The consumer's brain fills in the missing information.

This is precisely where trademark law encounters cognitive psychology.

Research has also demonstrated that consumers can experience false-memory effects when confronted with look-alike brands and packaging. Experimental work applying psychological memory paradigms to consumer confusion has found that imitative branding can trigger memory associations with the original brand.⁴ Confusion, therefore, is not necessarily the product of ignorance; it may arise from the ordinary functioning of memory itself.

THE POWER OF FIRST IMPRESSIONS

The purchasing environment matters enormously.

³ Luk Warlop, S. Ratneshwar & Stijn M. J. van Osselaer, *Distinctive Brand Cues and Memory for Product Consumption Experiences*, 22 Int'l J. Rsch. Marketing 27 (2005)

⁴ Andrzej Falkowski, Justyna Olszewska & Joanna Ulatowska, *Are Look-Alikes Confusing? The Application of the DRM Paradigm to Test Consumer Confusion in Counterfeit Cases*, 26 Mark. Lett. 461 (2015), <https://doi.org/10.1007/s11002-014-9279-0>

A consumer browsing a supermarket shelf may encounter dozens of products within seconds. An online consumer may scroll through advertisements even more rapidly. In such circumstances, the initial perceptual impression can carry disproportionate weight.

The World Intellectual Property Organization recognises that the assessment of confusion may depend upon factors including the distinctiveness and reputation of the earlier mark, the sophistication of consumers, and the similarity between marks and goods or services.⁵

The Supreme Court's decision in *Parle Products (P) Ltd. v. J.P. & Co., Mysore*⁶ similarly emphasised that competing marks should not be placed under microscopic side-by-side comparison. Instead, their broad and essential features must be considered in determining whether one is likely to mislead a person accustomed to dealing with the other.

This approach reflects an important psychological reality: recognition is not the same as detailed comparison.

A consumer who sees a familiar-looking package may experience a sense of recognition before consciously processing its differences. Trademark law's focus on overall impression therefore corresponds more closely to actual consumer behaviour than an excessively technical comparison would.

PHONETICS, VISUAL SIMILARITY AND COGNITIVE SHORTCUTS

Confusion is not confined to spelling.

Consumers process brands through multiple sensory and cognitive channels. Phonetic similarity can matter where products are requested orally. Visual similarity can dominate where products are purchased through packaging. Conceptual similarity may matter where two marks evoke the same idea.

Empirical research on brand-name similarity has found that consumers' perceptions of similarity can be influenced by shared beginnings of words, demonstrating that apparently minor linguistic structures can affect perceived resemblance.⁷

⁵ World Intellectual Property Organization, *WIPO Intellectual Property Handbook: Policy, Law and Use* (2d ed. 2004), https://tind.wipo.int/record/28661/files/wipo_pub_489.pdf (last visited Aug.21,2026)

⁶ *Parle Products (P) Ltd. v. J.P. & Co., Mysore*, (1972) 1 SCC 618 (India)

⁷ Jennifer S. Burt et al., *Brand Name Confusion: Subjective and Objective Measures of Orthographic Similarity*,

The law's concern with phonetic similarity is therefore not merely doctrinal tradition. It corresponds with how consumers actually encode and retrieve brand information.

This also explains why the “anti-dissection” principle is important. In *Amritdhara*, the Supreme Court recognised that an ordinary purchaser would not necessarily analyse the constituent meanings of a composite mark. The consumer encounters the brand as a psychological whole.

THE STAKES ARE HIGHER IN CERTAIN MARKETS

Not all confusion has identical consequences.

In *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*,⁸ the Supreme Court insisted upon a stricter approach where medicinal products are concerned because confusion may result not merely in financial loss but in serious consequences for health and life.

The decision illustrates a broader proposition: consumer psychology cannot be separated from consumer vulnerability.

The level of attention exercised by a consumer may vary according to the nature of the product, purchasing context, price, urgency and consequences of error. A consumer purchasing an expensive automobile may undertake extensive research; someone purchasing an everyday household product may rely heavily on familiarity and visual cues.

Trademark law must therefore remain sensitive to context rather than treating “the consumer” as a psychologically uniform individual.

CONFUSION AS A CONSUMER-PROTECTION PROBLEM

Trademark protection is sometimes portrayed as a mechanism for safeguarding the proprietary interests of brand owners. That description is incomplete.

A trademark performs an informational function. It communicates commercial origin and allows consumers to rely upon accumulated experience. When that signal is distorted by confusingly similar branding, consumers may purchase goods believing them to originate from, be affiliated with, or be approved by another trader.

23 J. Experimental Psychol.: Applied 320 (2017), <https://doi.org/10.1037/xap0000127>

⁸ *Cadila Health Care Ltd. v. Cadila Pharms. Ltd.*, (2001) 5 SCC 73 (India)

The result is a dual injury.

First, consumers may make decisions on the basis of inaccurate information. Secondly, legitimate businesses may lose the economic value associated with reputation and goodwill.

Academic research on brand confusion has similarly demonstrated that imitation can create a “halo of resemblance” through which consumers infer similarity of origin, use or quality.⁹

Trademark law consequently protects an informational ecosystem: the relationship between mark, memory, expectation and purchasing decision.

FROM THE PHYSICAL MARKETPLACE TO THE ALGORITHMIC MARKETPLACE

The psychology of confusion becomes even more significant in digital commerce.

Search engines, social-media advertisements, e-commerce platforms and recommendation algorithms compress the consumer's decision-making process. Sponsored results may appear alongside organic results; similar logos can appear within seconds; platform interfaces may reduce contextual information; and consumers increasingly encounter brands through thumbnails rather than physical packaging.

The problem is no longer simply whether two marks look alike on a shop shelf. It is whether their similarity can manipulate the consumer's digital journey.

This creates new questions for trademark law: Can a confusingly similar keyword divert a consumer before the consumer reaches the genuine brand? Does initial interest confusion matter where the consumer eventually discovers the mistake? Should algorithmic recommendations be considered when evaluating the likelihood of confusion?

These questions demonstrate that trademark doctrine must increasingly engage with the architecture of digital attention.

RETHINKING THE “AVERAGE CONSUMER”

The concept of the average consumer remains useful, but it should not become a rigid legal

⁹ Jean-Noël Kapferer, *Brand Confusion: Empirical Study of a Legal Concept*, 12 Psychol. & Marketing 551 (1995), <https://doi.org/10.1002/mar.4220120607>

stereotype.

Consumers differ in literacy, language, age, technological familiarity, purchasing experience and product knowledge. Even the same consumer behaves differently depending upon context.

The better approach may therefore be to understand the “average consumer” as a context-sensitive behavioural standard rather than a fictional person possessing a fixed level of intelligence and attention.

Such an approach would preserve doctrinal consistency while allowing courts to consider how real consumers actually perceive brands.

CONCLUSION

Trademark confusion is ultimately a story about the human mind.

A brand does not exist merely on a register. It exists in memory in the associations consumers develop between a name, an image, a product and an expectation of quality. When another trader creates a sufficiently similar sign, the legal injury may begin before the consumer consciously realises that anything is wrong.

Indian trademark jurisprudence has long recognised this reality through concepts such as “average intelligence”, “imperfect recollection”, overall similarity and the circumstances of purchase. Contemporary behavioural research gives those doctrines a deeper theoretical foundation.

The future of trademark law should therefore move beyond asking only “How similar are these marks?” and increasingly ask “How will these marks be perceived, remembered and acted upon by real consumers?”

That shift does not weaken brand protection. It strengthens it.

More importantly, it places the consumer the very person whose confusion trademark law seeks to prevent back at the centre of intellectual property law.

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