



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

**INTERIM APPLICATION (L) NO.9484 OF 2025  
IN  
COMMERCIAL IP (L) NO.353 OF 2025**

Sun Pharmaceutical Industries Limited

...Applicant/  
Plaintiff

**Versus**

Meghmani Lifesciences Limited and Another

...Respondents/  
Defendants

VISHAL  
SUBHASH  
PAREKAR

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VISHAL SUBHASH  
PAREKAR  
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*Mr. Hiren Kamod a/w. Mr. Shetank Tripathi, Ms. Radhika Mehta, Mr. Vudit Desai, Mr. Nipun Krishnaraj and Mr. Prem Khullar i/b. ANM Global, for the Applicant/ Plaintiff.*

*Mr. Ashutosh Kane a/w. Ms. Vedangi Soman, Ms. Avani Panchabhai i/b. W.S. Kane & Co., for Defendant No. 1.  
Ms. Rucha Ambekar, Master (Admn.), Court Receiver.*

**CORAM :** SHARMILA U. DESHMUKH  
**RESERVED ON :** DECEMBER 09, 2025  
**PRONOUNCED ON :** DECEMBER 23, 2025

**ORDER :**

1. The suit has been filed for infringement of trade mark and passing off.
2. The Plaintiff and Defendant No. 1 are pharmaceutical companies and Defendant No. 2 is the manufacturer of the impugned product for the Defendant No 1. The rival products are used for treatment of identical ailment i.e. heartburn and indigestion and have identical

molecules namely Sodium Alginate, Sodium Bicarbonate and Calcium Carbonate sold in form of oral suspension/syrup.

### **PLAINTIFF'S CASE:**

3. The grievance is as regards the infringement of the Plaintiff's registered trade mark 'RACIRRAFT' by the Defendant by use of its mark 'EsiRaft'. The trade mark "RACIRRAFT" was conceived and adopted by the Plaintiff in January, 2022 by arbitrarily combining the words 'RACI' which is misspelling of the word 'RACY' which suggest full of zest and vigour and 'RAFT' which means foam like formation caused by sodium alginate. The Plaintiff's product used for treatment of heartburn and indigestion contains molecules namely Sodium Alginate, Sodium Bicarbonate and Calcium Carbonate and is sold in the form of oral suspension/ syrup. The Plaintiff applied for registration of its trade mark on 17<sup>th</sup> January, 2022 and secured registration in Class 5. The annual sales turn over in respect of its product sold under the trade mark 'RACIRRAFT' for the year 2022-2023 was around 11.85 Crores and for the year 2023-2024 was 24.49 Crores.

4. The Defendant No 1's product uses an identical/deceptively similar trade mark and is used for treating identical ailment. The dishonest adoption of the mark by the Defendant No 1 is demonstrated

as the impugned product is caused to be manufactured from Defendant No 2, who is the manufacturer of the Plaintiff's product under an agreement, which restricts the Defendant No 2 from manufacturing product of third parties bearing identical/deceptively similar trademark.

5. It is stated that in order to come as close as possible to the Plaintiff's registered mark, the Defendant No1 has used two colour combination for 'ESI' and 'RAFT' in a similar manner as that of the Plaintiff. The Defendant No. 1 has filed an application on 21<sup>st</sup> March, 2024 for registration of the impugned mark 'ESIRRAFT' on a 'proposed to be used basis'. In reply to the examination report where third party marks 'ESIRRAFT' and 'EASYRAFT' were cited, the Defendant No 1 has stated that its mark has distinct pronunciation due to emphasis on 'si' diphthong and will not be pronounced as "Easy" , whereas in the present case the stand taken is that the impugned mark will be pronounced as "Easy" or "Esy".

#### **DEFENDANT'S CASE:**

6. The rival marks contains the common word 'RAFT' which is generic and common to the trade of medicinal and pharmaceutical preparations and no exclusivity can be claimed in "RAFT." The Plaintiff is not the lawful proprietor of the trade mark 'RACIRRAFT' as the search of

the trade mark registry reveals existence of various proprietors of marks containing the prefix 'RACI' / 'RACY'. The use of two colour combination, one for the prefix and other for the suffix, is common in use, particularly for treatment for indigestion. The Plaintiff cannot claim exclusivity in the colour combination as the Plaintiff's registration is for word mark. The pictorial table is produced showing the use of the word 'RAFT' in respect of about 30 products in two colour combination. The prefixes 'RACI' and 'ESI' are visually, structurally, phonetically distinct as 'RACI' will be pronounced as 'RAY-see' whereas 'ESI' will be pronounced as 'Easy' or 'ESY'. The sales turnover of Defendant No 1 for the period 2024-2025 was around 89 lakhs and for the month of April, 2024 was around 23 lakhs. In the examination report of the Defendant No 1's trade mark application, the Plaintiff's trade mark 'RACIRRAFT' was not cited as conflicting mark. The application suffers from from delay and laches as the Defendant No. 1 is using the trade mark in respect of its product since July, 2024. There is bonafide adoption as the prefix 'ESI' stands firstly from the patient point of view as Enhanced System Improvement and secondly, from the ailment perspective, as Esophageal Symptom Index.

## **SUBMISSIONS:**

7. Mr. Kamod, learned counsel for the Plaintiff submits that the

Plaintiff's registered mark is arbitrary coined word and the impugned mark is visually, structurally, aurally and phonetically similar to the registered mark. He submits that the Plaintiff is the prior user of the mark since the year 2022 and has earned sufficient goodwill and reputation demonstrated from the sales figure. He submits that the rival products being medicinal preparations, greater scrutiny is required to obviate even slightest possibility of confusion. He points out the two colour combination adopted by the Defendant No 1 similar to the registered trade mark, which found favour with the Court at the *ex parte* ad interim stage. He would further submit that this Court had come to a *prima facie* finding at the *ex parte* ad-interim stage, that the expression 'RAFT' *prima facie* does not appear to be sourced from any molecule or composition.

8. He would point out to the Defendant No 1's reply to the examination report to submit that the Defendant No 1 is estopped from taking varying stand in present proceedings. He would submit that an oral application has been made for vacation of ad-interim relief, which does not satisfy the requirement of Order 39 Rule 4 of CPC. He submits that the Defendant No. 1 has not tendered any acceptable explanation for adoption of 'ESI' and suffixing it with the 'RAFT' in the same manner as that of Plaintiff. He submits that there is no material produced to

demonstrate that the mark is common to the trade and the search strings cannot be accepted as proof of extensive use. He submits that the photographs produced on record to show the adoption of two colour combination by third parties is without any pleadings and details. He submits that the anti-dissection rule will apply and the mark will have to be compared as a whole. He submits that as the mark are similar, the difference in trade dress, pricing etc are not material. In support he relies upon the following decisions.

- (I) **Boots Company PLC, England and Anr. vs. Registrar of Trade Marks, Mumbai and Anr.**<sup>1</sup>
- (ii) **Encore Electronics Ltd. vs. Anchor Electronics and Electricals Pvt. Ltd.**<sup>2</sup>
- (iii) **Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd.**<sup>3</sup>
- (iv) **Medley Laboratories (P) Ltd., Mumbai and Anr. vs. Alkem Laboratories Ltd.**<sup>4</sup>
- (v) **Lupin Limited vs. Eris Lifesciences Pvt. Ltd. and Ors.**<sup>5</sup>
- (vi) **Glenmark Pharmaceuticals Ltd. vs. Sun Pharma Laboratories Ltd.**<sup>6</sup>
- (vii) **Wyeth Holdings Corporation and Anr. vs. Burnet Pharmaceuticals (Pvt.) Ltd.**<sup>7</sup>.

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1 2002(2) Mh.L.J. 834.

2 2007 SCC OnLine Bom 147.

3 (2001) 4 Supreme Court Cases 73.

4 2002(3) Mh.L.J. 546.

5 2015 SCC OnLine Bom 6807.

6 FAO No. 146/2023 Dt.22-01-24 (Delhi High Court).

7 2008 SCC OnLine Bom 76.

9. *Per contra*, Mr. Kane, learned counsel for Defendant No. 1 submits that there is no quarrel with the proposition that the marks are required to be compared as a whole, however, when so compared the rival marks are clearly dissimilar. He would further submit that the *ex parte* ad-interim order of 7<sup>th</sup> April, 2025 considered the two colour combination of the rival marks being similar. He submits that the *prima facie* finding in paragraph 16 when read indicates that the Court has held if the 'RAFT' is sourced from molecule there could be a plausible defense on the part of the Defendants. Pointing out to the pleading in the plaint, he submits that the Plaintiff has admitted that Defendant No. 1 could have adopted any other trade mark even it wanted to use RAFT as part of its mark and the objection is to the use of impugned trade mark alleging the same to be deceptively similar to the Plaintiff's trade mark. He submits that the Plaintiff cannot claim any monopoly over 'RAFT' and points out that 'RAFT' is foam formation caused by sodium alginate. He would further submit that the word 'RAFT' is common to the trade as is evident from the photographs produced in paragraph 6 of the affidavit in reply which shows about 32 products using the suffix 'RAFT' and the mark in two colour combination for treating the same ailment.

10. Mr. Kane has physically produced the bottles before this Court to demonstrate the extensive use of the work 'RAFT' by third parties and

use of two colour combination.

11. He submits that the Plaintiff cannot be considered as true and lawful proprietor of the mark 'RACIRRAFT' as extract of trade mark registry shows various entities using RACI as well as RACY. He submits that though Plaintiff has registered the word mark, it claims implied monopoly over two colour combination which is unacceptable.

12. He would further submit while comparing the mark as a whole, it is the prefix or the first syllable which is the dominant factor. He submits that neither the prefix nor the first syllable of the Defendant No. 1's mark is similar to that of the Plaintiff's mark and there is no possibility of confusion. He submits that the factum of Defendant No 2 being common manufacturer for asserting the claim of dishonest adoption overlooks the position that the manufacturer is approached after the mark is adopted. He would submit that in the examination report while seeking registration of the impugned mark, the Plaintiff's mark was not cited and even if search had been conducted by the Defendant No 1 only 'EASY' or 'ESY' would have been cited. He would submit that the case of the Plaintiff that it has been diligently protected its trade mark cannot be accepted as the invoices of the Defendant No. 1 shows user since July, 2024.

13. Mr. Kane would distinguish the decisions relied upon by Mr. Kamod on the ground that the decisions does not deal with the submission of the prefix or the first syllable being the dominant factor. He submits that the prosecution history estoppel will not apply as the counter statement stated that the Defendant No 1's trade mark has distinct pronunciation by laying emphasis on 'si' diphthong whereas the Plaintiff says that the same will be pronounced as 'c'. He submits that there an acceptable explanation tendered by the Defendant No 1 for adoption of the mark "EsiRaft." In support he relies upon the following decisions.

(i) **J.R. Kapoor vs. Micronix India**<sup>8</sup>

(ii) **M/s. Johann A. Wulffing vs. Chemical Industrial & Pharmaceutical Laboratories Ltd. and Anr.**<sup>9</sup>

(iii) **Cadila Laboratories Ltd. and Anr. vs. Dabur India Ltd.**<sup>10</sup>

(iv) **Ranbaxy Laboratories Ltd. vs. Indohemie Health Specialities Private Limited**<sup>11</sup>

(v) **Ciba Geigy Ltd. vs. Sun Pharmaceutical Industries**<sup>12</sup>

(vi) **Abdul Cadur Allibhoy vs. Mahomedally Hyderally**<sup>13</sup>

(vii) **Mahendra & Mahendra Paper Mills Ltd. vs. Mahindra & Mahindra**

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8 1994 Supp (3) SCC 215.

9 AIR 1984 Bombay 281.

10 1997 SCC OnLine Del 360.

11 2002 (24) PTC 510 (Bom)

12 1992 SCC OnLine Guj.188.

13 The Bombay Law Reporter, Vol III 220.

**Limited<sup>14</sup>**

**(viii) South India Beverages Pvt. Ltd. vs. General Mills Marketing Inc. & Anr.<sup>15</sup>**

14. In rejoinder, Mr. Kamod would distinguish the decisions relied upon by Mr. Kane by submitting that the decisions are prior to the decision in the case of **Cadila Health Care Ltd.** (supra) which has settled the applicable principles and that in case of slightest possibility of confusion, injunction should follow. He submits that there is no injunction claimed as to the use of colour combination and what is sought to be pointed out is the deceptive similarity by use of an identical manner of depicting of the mark.

**REASONS AND CONCLUSION:**

15. The Interim application was taken up for final disposal with consent. There are no submissions canvassed by Mr. Kane on suppression of facts by the Plaintiff so as to invoke the provisions of Order 39 Rule 4 of CPC. It is therefore not necessary for this Court to consider whether ad interim relief is required to be vacated under order 39 Rule 4 of CPC. In any event, considering that the application was taken up for final disposal and submissions were canvassed on rival

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14 (2002) 2 Supreme Court Cases 147.

15 2015 (61) PTC 231 (Del) (DB).

merits of the case, the said aspect need not be considered.

16. The Plaintiff's case of injunction rests on the deceptive similarity between the rival marks 'RACIRRAFT' vs. 'EsiRaft'. Section 2(h) of Trade Marks Act, 1999 defines deceptive similarity as under:

"A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion."

17. The well settled principles for assessing the deceptive similarity lays emphasis on visual appearance as well as the phonetic similarity i.e. that the marks have to be judged by the eye as well as the ear. In ***Cadila Health Care Ltd vs Caidla Pharmaceuticals Ltd*** (supra), the Hon'ble Apex Court has held that the principle of phonetic similarity is not be jettisoned when the manner in which the competing words are written is different. The statutory provisions indicate that the resemblance between the marks should be of a nature so as to cause confusion or deception.

18. Dealing with the aspect of visual and structural similarity, Mr. Kamod has not laboured on the visual similarity and indeed could not have, considering the manner of depiction of the rival marks. The Plaintiff's registered mark 'RACIRRAFT' is depicted in capital letters,

whereas in the Defendant's trademark 'EsiRaft", the starting alphabet 'E' is written in capital case, with the following words "si" in small case with the continuing alphabet "R" in capital letter followed by the words "aft" in small case.

19. The use of two colour combination for depicting the impugned mark which is similar to the registered trade mark has been pressed in service by Mr. Kamod on the aspect of deceptive similarity. Mr. Kane had produced the physical bottles of which the photographs were set out in paragraph 6 of the Affidavit of Reply. *Prima facie* there appears to be usage of two colour combination in depiction of mark in respect of medicinal preparation. Whether the use is such an extensive use so as to fall in the realm of being common to the trade will be a matter of trial. I find *prima facie* basis for adoption of two colour combination for depiction of the mark while using the suffix 'RAFT' for drawing attention to the indicator of foam like formation caused by sodium alginate. Even accepting Mr. Kamod's contention that production of mere photographs is not sufficient to demonstrate extensive use, the use of two colour combination, by itself, is not sufficient to come to a *prima facie* finding of deceptive similarity.

20. The anti-dissection rule requires the marks to be compared as a

whole. The assessment is in respect of the impression that the rival marks creates upon overall comparison. Both the products are medicinal preparations used for treatment of heartburn and indigestion and the common word in both the marks is "RAFT". It is settled that in disputes involving composite marks, mere presence of shared or generic word cannot by itself justify a finding of deceptive similarity. The common word 'RAFT' is an indicator of the foaming agent i.e. sodium alginate. The rival marks are therefore combination of generic word with invented prefix RACI vs Esi. What is required to be assessed is the overall similarity of the rival marks for arriving at a *prima facie* finding of deceptive similarity. *Prima facie* upon overall visual comparison of the rival marks as a whole, in my view, the mark "EsiRaft" is not visually, structurally similar to the registered trade mark "RACIRRAFT".

21. In so far as phonetic similarity is concerned, the argument of Mr. Kamod is that the prefix "Esi" will be pronounced as "Aci" similar to "Raci" whereas Mr. Kane would submit that the prefix "Esi" will be pronounced as "easy". The Plaintiff's trademark begins with the consonant "R" which will be pronounced differently from the starting vowel "E" of the impugned mark. The first syllable of the Plaintiff's mark is RAY followed by CEE like the alphabet "C", whereas the first syllable of the Defendant's mark is Ee followed by si even accepting the

Defendant's stand before the trade mark registry. The opening syllables of the two competing marks are completely different and normally the opening syllables are rarely mispronounced. Even making allowance for mispronunciation by the less informed or by reason of hurried utterances, it is difficult to accept that the first syllable "Ee" when normally spoken, will be pronounced as alphabet "A" followed by "si" spoken as alphabet "C" to make it sound similar to Raci. The alphabet "E" has a distinct sound than the sound of alphabet "A" and there is no probability of "E" being pronounced as "A".

22. In the decision of ***M/s Johann A. Wulffing vs Chemical Industrial & Pharmaceutical Laboratories Ltd*** (supra), the Hon'ble Division Bench while comparing the rival marks Complamina and Ciplamina followed the decision of Hon'ble Apex Court in ***F Hoffmann vs Geoffrey Manners AIR 1970 SC 2062*** in case of Dropovit vs Protovit and held that in both the words the suffix is not the controlling sound by noting the extract from Kerly's Law of Trade Marks.

23. The Hon'ble Apex Court in the case of ***F. Hoffmann-La Roche & Co.Ltd. vs. Geoffrey Manner & Co. Pvt. Ltd.***<sup>16</sup> was considering the rival marks 'Protovit' and 'Dropovit' and held the last three letters 'vit' was a well known common abbreviation to denote vitamin preparations. The

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<sup>16</sup> 1969(2) SCC 716.

Court held that greater regard is to be paid to the uncommon element in the two words. It is difficult to hold that one will be mistaken for or confused with the others. The letters 'D' and 'P' in "DROPOVIT" and the corresponding letters 'P' and 'T' in "PROTOVIT" were held to be incapable of being slurred over in pronunciation given that the words were dissimilar.

24. On the other hand, in the decision of ***Sun Pharmaceuticals Industries Ltd vs Emcure Pharmaceutical*** Ltd (supra), the Learned Single Judge held that it is not in every word that a prefix is phonetically prominent or dominant and the suffix is slurred over.

25. In ***Boots Company PLC, England vs Registrar of Trade Marks*** (supra), the rival marks were Crofen vs Brufen. The Learned Single Judge held that in fast utterance, the word Crofen may be pronounced as Brufen and vice versa even while holding that visually and phonetically, the marks were dissimilar. In ***Encore Electronics Ltd vs Anchor Electronics & Electricals*** (supra), the Hon'ble Division Bench accepted the phonetic similarity between Anchor and Encore by holding that there is not even a subtle distinction in the pronunciation of the rival marks.

26. In ***Medley Laboratoreis (P) Ltd vs Alkem Laboratories Limited*** (supra), the rival marks were supaxin vs spoxin. The Hon'ble Division Bench held the marks to be visually, phonetically and structurally similar. In ***Lupin Limited vs Eris Lifesciences Pvt Ltd*** (supra), the Learned Single Judge considered the impugned mark "Nebistol" to be deceptively similar to the registered trade mark "Nebistar."

27. In ***Glenmark Pharmaceuticals Ltd vs Sun Pharma Laboratories Ltd*** (supra), the rival marks were "Istamet" vs "Indamet". The Hon'ble Division Bench of Delhi High Court upheld the finding of Single Judge that the marks meets the test of structural and phonetic similarity and that the marks meant to attend to chronic ailments.

28. In ***Wyeth Holding Corporation & Anr*** (supra), the Learned Single Judge considered the rival marks "Folvite" vs "Fol-V" to be structurally and phonetically similar.

29. The findings of deceptive similarity in the judicial pronouncements cited by both parties applied the well settled principles for judging whether the marks therein were visually and phonetically similar. Depending on the rival marks, the Court is required to make an independent assessment and the decisions based on

consideration of the marks concerned in those case would have limited bearing unless the decision sets out guiding principles.

30. Applying the well settled principles which governs the field while assessing the rival marks as regards the anti-dissection rule, view point of an average consumer with imperfect recollection, holistic comparison, the likelihood of confusion etc, in my view, the competing marks are *prima facie* visually and phonetically dissimilar and will not create any confusion in the minds of the consumers. Pertinently, in the examination report, it was not the Plaintiff's registered mark which was cited, but the marks "Easy" and "ESY" which indicates that the Registrar of Trade Marks was of the opinion that the impugned mark is not deceptively similar to the Plaintiff's mark. There is no dispute with the proposition that even a slightest possibility of confusion must lead to restrain on use of the impugned mark. However, upon holistic comparison of the rival marks, I do not find that there is any possibility of confusion.

31. What weighed with the learned single Judge for grant of ex parte ad-interim relief was that the expression 'RAFT' *prima facie* does not appear to be sourced from any molecule or chemical composition which could have led to plausible defence on the part of the Defendants

and the two colour combination. The learned Single Judge was therefore of *prima facie* view that if 'RAFT' was sourced from any molecule or chemical composition the Defendants would have defence for using the impugned mark. It is not debated that RAFT means foam like formation and sodium alginate is the foaming agent, which is the molecule component of the rival products. The word 'RAFT' is an indicator of the product's molecule properties, which even as per the *ex-parte ad interim* order, will amount to plausible defence for adoption of the mark.

32. To support the contention of dishonest adoption of the impugned mark by the Defendants, emphasis is laid on products being manufactured by Defendant No. 2 who was the common manufacturer for Defendant No. 1 and the Plaintiff. Mr. Kane is right in his submission that it is only after the adoption of the mark that the agreement would be entered with Defendant No. 2 for manufacturing of the product and not vice versa and therefore the same cannot constitute a ground to support the contention of dishonest and bonafide adoption. In the affidavit in reply the Defendant has tendered an explanation of using prefix 'ESI' which means an enhanced system improvement from the patient point of view and from the ailment perspective esophageal symptom index which is perfectly acceptable explanation for adoption

of the mark. In the affidavit in rejoinder, there is no denial that 'Esi' can mean the indicators as stated out by the Defendant No 1 and the contention is that the Defendant No 1 had earlier claimed that 'ESI' will be pronounced as 'EASY' and now it is claiming that the word 'ESI' was taken as abbreviation for enhanced system improvement and Esophageal Symptom Index. Being a medicinal product, Defendant No. 1 has given a *prima facie* cogent explanation for adoption of the mark 'ESI' whether pronounced as 'EASY' or 'Esi'. The rival products are medicinal preparation and usually the practice is to use a trade name which is an indicator of either the composition of product or the disease that the product is intended to treat or the part of the body which is affected by the said ailment.

33. The contention of Mr. Kane is that the Plaintiff is not the true and lawful proprietor of the mark 'RACIRRAFT' as the same is not an arbitrary word coined by the Plaintiff by relying on search strings to show numerous registrations of marks containing the word RACI in fact borders on a challenge to the validity of the registration of the trade mark without actually challenging the validity. It appears to be an attempt to distance itself from the 'Lupin Principles' and at the same time mount a challenge to the exclusive right of the Plaintiff to use its registered trade mark. I am afraid this is not possible of acceptance. It

was open for the Defendant to fit its case on the invalidity of the Plaintiff's registration based on the Lupin Principles' and merely because there are other marks which use the word 'RACI' cannot give rise to a *prima facie* finding that the Plaintiff's registered mark is not a coined arbitrary work. Similarly the defence of delay without being supported by the claim of acquiescence is no defence in an action for infringement.

34. Coming to the aspect of passing off, it would be apposite to consider the decision of **Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd.** (supra), where the Hon'ble Apex Court held that in an action for passing off on the basis of unregistered trade mark, generally for deciding the question of deceptive similarity, the following factors to be considered:

- a) The nature of the marks.
- b) The degree of resemblance between the marks, phonetically similar and hence similar in idea.
- c) The nature of the goods in respect of which they are used as trade marks.
- d) The similarity in the nature, character and performance of the goods of the rival traders.
- e) The class of purchasers who are likely to buy the goods bearing the marks they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and/or using the goods.
- f) The mode of purchasing the goods or placing orders for

the goods And

g) Any other surrounding circumstances.

h) Weightage must be given to each factor depending on facts of each case and the same weightage cannot be given to each factor in every case.

35. As discussed above, I am unable to find resemblance between the marks, visual or phonetic. This takes the case sufficiently out of the ambit of passing off. There is no material on record to persuade this Court to accept that the Defendant No 1 portrayed its product intentionally or unintentionally as that of the Plaintiff. The other factors such as difference in the physical appearance of the rival products play important role as apart from the two colour combination in which the trade mark is written, there is no similar placement of elements, colour scheme, packaging, label, features etc. The get up of the marks itself is different as the marks are depicted in different manner and the overall visual appearance of the rival products is dissimilar. The Defendant No 1 has been marketing its product since July, 2024 and the proceedings have been initiated March, 2025 pleading that the Plaintiff became aware of impugned mark in February, 2025. The Defendant No 1 has produced its sales turnover which for the period from 19<sup>th</sup> July, 2024 to 31<sup>st</sup> March, 2025 was Rs 89,24,597/ and for the period from 1<sup>st</sup> April, 2024 to 30<sup>th</sup> April, 2025 was Rs 23,86,519/.

During this period the Defendant No 1 has sold about 97,754 bottles which could not have escaped attention, if the Plaintiff claims to be vigilant in protecting its mark.

36. In light of the above discussion, the Plaintiff has failed to make out *prima facie* case of infringement of trade mark and passing off. In the absence of any deceptive similarity *prima facie* being demonstrated, the Defendant No 1 cannot be restrained from use of the impugned mark which has been adopted and in use by the Defendant No 1 since July, 2024. The ad-interim relief granted vide order dated 7<sup>th</sup> April, 2025 stands vacated. Interim application stands dismissed.

**(SHARMILA U. DESHMUKH, J.)**

37. At this stage request is made for continuation of ad-interim relief for period of one week.

38. The said request is opposed by Mr. Kane.

39. I am inclined to extend the ad-interim relief for a period of one week from the date of uploading of this order.

**(SHARMILA U. DESHMUKH, J.)**