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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 29 May 2025**Pronounced on: 15 September 2025*+ **FAO(OS) (COMM) 20/2020, CM APPLs. 61732/2024, 61733/2024, 17866/2025 & 27609/2025****EXOTIC MILE**

.....Appellant

Through: Mr. Akhil Sibal, Sr. Adv. with Mr. Gaurav Miglani, Ms. Archana Sahadeva, Mr. Sharabh Shrivastava, Ms. Taaniyaa Dograa, Ms. Anushka Aman, Mr. Harshit Bhoi, Mr. Krishnesh Bapat and Ms. Sarah Haque, Advs.

versus

IMAGINE MARKETING PVT LTD

.....Respondent

Through: Mr. Mukul Rohatgi, Mr. Jayant Mehta and Mr. J. Sai Deepak, Sr. Advs. with Ms. Anuradha Dutt, Mr. Tushar Jarwal, Ms. Suman Yadav, Mr. Sachin Gupta, Ms. Nikhita K. Suri, Mr. Arunabha Ganguli, Ms. Atishree Sood, Mr. Raghav Dutt and Mr. Gurudas Khurana, Advs.

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE AJAY DIGPAUL**




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JUDGMENT**15.09.2025****C. HARI SHANKAR, J.****An Overview**

1. The order impugned in the present appeal has been rendered by a learned Single Judge of this Court in IA 13041/2019 and IA






14039/2019. Both applications were filed in CS (Comm) 519/2019¹, in which the respondent Imagine Marketing Pvt Ltd² is the plaintiff and the appellant Exotic Mile³ is the defendant. IA 13041/2019 was preferred by IMPL under Order XXXIX Rules 1 and 2 of the CPC⁴, seeking interim injunction, pending disposal of the suit, against EM

using the marks BOULT, ,  and , or any other mark which, according to IMPL, was deceptively similar

to IMPL's registered trade marks  and . IA 14039/2019, preferred by EM, sought vacation of the *ex parte ad interim* order of injunction already granted.

2. The learned Single Judge has, in the impugned order, enjoined

EM from using the marks ,  and , pending disposal of the suit. Additionally, though there was no such prayer in the suit or in IA 13041/2019, the impugned order also enjoins EM from using the tag line "UNPLUG YOURSELF".

3. The learned Single Judge has *not*, however, enjoined EM from using the mark BOULT, or from using any mark which may be

similar to the marks ,  and . The

¹ "the suit" hereinafter

² "IMPL" hereinafter

³ "EM" hereinafter

⁴ Civil Procedure Code



order is *expressly restricted* to the marks



and  and to the tag line “UNPLUG YOURSELF”.




4. No application was filed by IMPL, seeking any modification or clarification of the impugned order passed by the learned Single Judge. Nor has any cross-appeal filed by IMPL, either, before us.

5. EM has challenged the impugned order *in toto*. Additionally, it has submitted that it has, in fact, discontinued use of the marks



and



,  and , and the tag line “UNPLUG YOURSELF”. It is, instead, proposing to use the mark GOBOULT which, according to EM, does not violate any intellectual property rights held by IMPL in its registered trade marks.




6. IMPL has defended the impugned order. It has also opposed the proposed use, by EM, of the mark GOBOULT.

7. Our conclusions are as under:

(i) IMPL never sought any injunction against the use of the tag line UNPLUG YOURSELF by EM. The learned Single Judge could not, therefore, have granted such an injunction. The impugned order, to the extent it injuncts EM from using the tag line UNPLUG YOURSELF is, therefore, quashed.









(ii) To the extent it injuncts EM from using the marks

,  and , the impugned order is upheld.

(iii) Apropos the mark GOBOULT, the impugned order does not injunct EM from using the said mark. It does not even extend the injunction to marks which may be similar to the

marks ,  and . The injunction is specifically restricted to the marks

,  and . There is no cross-appeal or cross-objection by IMPL praying that the learned Single Judge ought to have extended the injunction to all marks

which are similar to ,  and . In the absence of any injunction, direct or indirect, in that regard, in the impugned order, EM can obviously not be restrained from using the mark GOBOULT.

(iv) Inasmuch as it never formed subject matter of the *lis* before the learned Single Judge, no occasion arises for us to adjudicate on whether the use of the mark GOBOULT, by EM is, or is not, liable to be injuncted. We, therefore, make no observations thereon. We merely clarify that, as on date, there is no operating injunction against EM using the mark GOBOULT.





The rival contentions in that regard are, therefore, not required to be considered by us. In case IMPL has any reservation against EM using the mark GOBOULT, that would constitute a distinct cause of action, for which IMPL would be at liberty to institute separate original proceedings, in accordance with law. We say nothing on the merits thereof.

8. We now proceed to advert in greater detail to the controversy, and adduce reasons for our conclusions.

The *lis*

9. The suit stands instituted by IMPL against EM. IMPL has alleged, in the suit, that EM had, by adopting the mark BOULT, as

well as the logos ,  and ,

infringed IMPL's registered trademarks  and 

and had also sought to pass off their products as the products of IMPL. Predicated on this allegation, IMPL has sought, in the suit, a decree of permanent injunction, restraining EM from using the allegedly

infringing BOULT, ,  and  marks and from passing off their products as the products of IMPL.

10. The suit is presently pending before a learned Single Judge of this Court.



11. IMPL filed, in the suit, IA 13041/2019 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908⁵, seeking an interim injunction, restraining EM from using the allegedly infringing marks during the pendency of the suit. By order dated 25 September 2019, the learned Single Judge, while issuing summons in the suit and notice in IA 13041/2019, granted *ex parte ad interim* injunction, restraining EM from using the allegedly infringing marks till the next date of hearing. EM, thereupon, filed IA 14039/2019⁶ under Order XXXIX Rule 4 of the CPC, for vacation of the *ad interim* order of stay. By order dated 21 January 2020, the learned Single Judge has allowed IA 13041/2019 and dismissed IA 14039/2019. The operative paragraph of the impugned judgment reads thus:

“24. Consequently, the applications are disposed of and an interim injunction in respect of infringement of the plaintiffs registered trademark 3456800, passing off in respect of plaintiffs registered trademarks 2828749, 2828750, 2828752, 4038057, 3456800 and 3907213, infringement of the copyright of the plaintiff’s marks, dilution of the mark is granted in favour of the plaintiff and against the defendants and the defendants, their agents

are restrained from using the marks



or



or and 'UNPLUG YOURSELF' till the disposal of the suit.”

12. Aggrieved by the aforesaid order, EM has approached this Court by means of the present appeal, under Section 13 of the Commercial Courts Act, 2015.

⁵ “CPC” hereinafter

⁶ Wrongly cited, in para 10 of the impugned order as IA 1043/2019



13. We have heard Mr. Akhil Sibal, learned Senior Counsel for the appellant and Mr. Mukul Rohatgi, Mr. Jayant Mehta and Mr. J. Sai Deepak, learned Senior Counsel for the respondent, at length. Learned Counsel have also filed written statements which have been duly considered.


Facts


Pleadings before the learned Single Judge

The plaint

14. The plaint, as instituted by IMPL, is predicated on the following assertions and allegations:



(i) IMPL is a market leader in electronic gadgets such as earphones, headphones, speakers, sound bars and travel chargers, which are manufactured and sold under its flagship

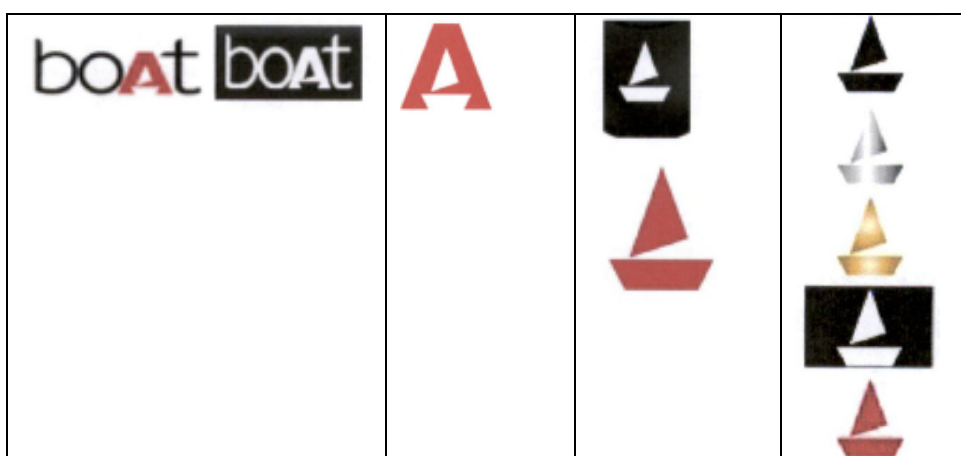
brand ⁷, which was coined and adopted by its directors in 2014. IMPL also adopted the tagline “PLUG INTO NIRVANA”.

(ii) The  logo is an original artistic work, of which IMPL is the copyright owner. In the said logo, the letter

⁷ “the boAt” mark hereinafter



 is independently an artistic work, which depicts the image of a boat within the letter. The boAt device  is independently used by IMPL for its products. The various devices and marks used by IMPL are as under:








(iii) The aforesaid boAt logos, as original artistic works, were created by Bharat Kumar Sharma in 2014 for consideration, and were transferred to IMPL *vide* No Objection Certificate dated 10 May 2014. As the owner of copyright in the boAt logos, IMPL had the exclusive right to use or reproduce the said logos.

(iv) IMPL is also the registered proprietor of the following registrations, under Section 23 of the Trade Marks Act 1999:

Registration No	Class	Trademarks	Date of Application
2828749	9		16 October 2014
2828750	11		16 October 2014



2828752	35		16 October 2014
3456800	9		13 January 2017
4038057	9	boAt (WORD)	26 December 2018
4117864	9		14 March 2019
4117865	35		14 March 2019
3907213	9		4 August 2018
3456799	9	Plug Into Nirvana	13 January 2017
4203500	9	NIRVANAA	11 June 2019

(v) Various assertions regarding the goodwill and reputation of IMPL in the aforesaid logos have also been made. As EM does not challenge the goodwill and reputation of IMPL, reference to these assertions is being eschewed. However, it may be noted that, to vouchsafe its reputation, IMPL has placed on record its turnover which increased from ₹ 5.5 crores in its



first year of production 2014-15 to over ₹ 330 crores in the year 2019-20.

(vi) The boAt marks were, therefore, source identifiers of IMPL and had acquired enviable reputation in the market.

(vii) In February 2019, IMPL received an email from online marketplace Myntra regarding a customer complaint, purportedly from a customer who had purchased EM's product, believing it to be IMPL's. Further enquiries revealed that EM was selling cheap and low quality gadgets under the brand name BOULT, which is deceptively similar to the boAt brand of IMPL.

(viii) Moreover, EM is owned by Vinod Kumar Gupta, the father of Varun Gupta, who had approached IMPL in 2017, desiring to become its distributor. IMPL had initially allowed Varun Gupta to operate as its reseller but, owing to lack of professionalism on his part, had to end the relationship.

(ix) The opening "B" and the closing "T" consonants resulted in the mark BOULT result in its becoming phonetically deceptively similar to IMPL's mark BOAT.



(x) EM had also adopted the logo , which was

also imitative of IMPL's  logo.

(xi) By using a phonetically deceptively similar mark and a deceptively similar logo to that of IMPL, EM had created a situation in which there was every likelihood of confusion, among consumers, between the marks of EM and IMPL.

(xii) It was conceded, however, that the device mark



stood registered in favour of EM in 2017 in class 9 for “electronics ear phones, head phones, smart watches, smart wearables, mobile & mobile accessories, laptops, scientific nautical, surveying electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life saving and teaching apparatus and instruments apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs; mechanisms for coin-operated apparatus: cash registers, calculating machines, data processing equipment and computers and fire extinguishing apparatus”.






(xiii) To exacerbate the likelihood of confusion, EM also adopted the tagline “UNPLUG YOURSELF” which was



deceptively similar to IMPL's tagline "PLUG INTO NIRVANA", and named one of its products as "Boult Bass Bud" which is deceptively similar to the name of IMPL's corresponding products "boat Bass Heads".

(xiv) EM had also adopted a get-up and colour scheme for its products, as well as a mode of packaging, which was similar to that of IMPL.

15. Predicated on these assertions and allegations, IMPL alleged

that EM had, by using the ,  and  marks, infringed the registered BOAT/boat,  and  marks of IMPL and had also sought to pass off its products as the products of IMPL.

16. Accordingly, IMPL instituted the suit against EM, seeking injunctive reliefs as already noted in para 9 supra, along with delivery-up, rendition of accounts, damages and costs.

Written statement

17. Responding to the assertions in IMPL's plaint, EM contended, in its written statement, as under:




(i) EM was a proprietorship, engaged in the business of audio gadgets and specialised in speakers and head phones since 2017. It is presently one of the largest Indian owned audio brands.

(ii) EM coined the marks BOULT and BOULT AUDIO and




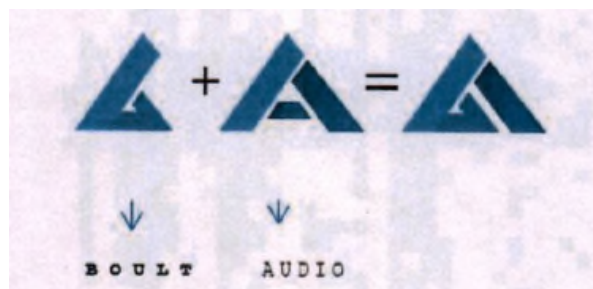
in 2017 and has been continuously and extensively using the said marks since then.

(iii) BOULT is an arbitrary word, which has no etymological meaning. It was a derivative of “BOLT”.

(iv) In order to strength its mark, EM also obtained registration of the device mark  in 2017 in class 9.



(v) The logo  was also an inventive creation by joining the first letters of Boul and Audio, and was coined thus:





(vi) There is no similarity between the said mark and the







IMPL's mark, even if the marks are seen in red and white colour combination.

(vii) EM had also considerable market exposure, with its sales turnover increasing from ₹ 2,96,19,290/- in 2017-2018 to ₹ 66,59,39,394/- in April-September 2019.


(viii) EM had also incurred promotional expenses, to promote and advertise its marks, which had increased from ₹ 4,18,882/- in 2017-2018 to ₹ 3,39,37,682/- in April-September 2019.


(ix) The following comparative table makes it clear that there is no similarity between EM's and IMPL's marks:

EM's trade marks	IMPL's trade marks
	
BOULT (word mark)	boAt (word mark)
	



	
	
UNPLUG YOURSELF (TAGLINE)	UNPLUG INTO NIRVANA (TAGLINE)

(x) IMPL was not using  as a standalone mark,

and it was only part of its  logo. The standalone mark which was used by IMPL was the logo



, which had no similarity either with IMPL's



or EM's .

(xi) Equally, there is no similarity between the tagline “UNPLUG YOURSELF” and “PLUG INTO NIRVANA”, the only common factor being “PLUG”, which is a term common to




the trade and over which no one can claim monopoly. Moreover, the meanings of the two taglines were opposed to each other.



(xii) Similarly, it could not be said that the name “Boult Bass Buds” is similar to “boAt Bass Heads”. The only common feature between the two names is “Bass”, which, again, is a term which is common to the trade.

18. For all these reasons, EM submitted that IMPL had not made out a *prima facie* case as would entitle it to any relief from the Court.

Replication


19. In its replication, IMPL contested EM’s claim that it had been

using  since 2017. It was pointed out that the application dated 18 October 2018 for registration of the said mark was filed on proposed to be used basis. The claim that the mark BOULT have been derived from “BOLT” was also denied as being an afterthought and

without merit. The logos  and  of IMPL and EM, it was submitted, both resembled the letter A, and the likelihood of confusion between them, in the mind of the consumer, was inevitable. The claims to reputation and goodwill, urged by EM, were also denied. It was submitted that the sales turnover of EM, in the years



2017-2018 and 2018-2019 was insignificant, and exponentially rose in

2019 after EM adopted the imitative  mark.

20. The remaining assertions in the replication filed by IMPL were broadly reiterative of the assertions in the plaint.

The impugned judgment

21. By judgment dated 21 January 2020, the learned Single Judge has allowed IA 13041/2019 filed by IMPL and dismissed IA 14039/2019 filed by EM. The learned Single Judge has, in arriving at her conclusion, reasoned thus:

- (i) IMPL was the prior user of the trademark BOAT.
- (ii) The rival marks were used for goods belonging to the same category with similar descriptions.
- (iii) IMPL already had an established market when Mr. Varun Gupta acted as a Consultant for EM, even as per EM's own averment. Thus, EM was aware of the trademark of IMPL.
- (iv) BOAT and BOULT are phonetically similar, *inter alia* because of the fact that two words had the same first and last consonance, i.e., B and T.



(v) Thus even on this ground, a case of deceptive similarity of the mark BOULT with the mark BOAT is made out. Reliance has been placed, for this purpose, on the judgment of the Supreme Court in *K.R. Chinna Krishna Chettiar v Shri Ambal & Co.*⁸ and on the judgment of the High Court of Bombay in *Encore Electricals Ltd v Anchor Electronics and Electricals Ltd*⁹.

(vi) The products of IMPL and EM sold under the rival marks were purchased by persons of all strata of society, including children.

(vii) The logos adopted by EM and IMPL were similar. Both were in the form of a triangle.

(viii) The use of the word PLUG in the tagline of EM was also designed to cause deception.

(ix) Thus, as the adoption of its mark, logo and tagline was dishonest, the fact that EM had been using its mark since 2017, or had invested huge amounts in promotion and advertising, would not tilt the balance of convenience in its favour.

(x) Apart from using a deceptively similar logo and name, even the name of the product of EM, i.e. “Boult Bass Buds”,

⁸ (1969) 2 SCC 131




⁹ 2007 (35) PTC 714



was similar to the name of IMPL's corresponding product, i.e. "boAt Bass Heads".

(xi) Though, as EM's mark was also registered, no action for infringement would lie, a *prima facie* case for passing off is made out.

22. On the basis of these findings, the learned Single Judge has granted an interim injunction, restraining EM from using the marks

,  and  and the tagline 'UNPLUG YOURSELF' till the disposal of the suit.

23. Aggrieved thereby, EM has filed the present appeal.

Rival Contentions

Submissions of Mr. Akhil Sibal, learned Senior Counsel for EM

24. Mr. Sibal submits, at the outset, that, even without any prayer for injunction against use of the tagline UNPLUG YOURSELF, the learned Single Judge has enjoined the use of the tagline. Even on this sole ground, it is submitted that the injunction against use of the tagline UNPLUG YOURSELF is liable to be set aside.

25. Equally, it is submitted that there is no relief sought qua the use, by EM, of "Boult Bass Bud" as the name of one of its products. There



is also no allegation of trade dress infringement. The impugned judgment of the learned Single Judge, however, significantly relies, to support its conclusions, on the similarity between IMPL's "Boult Bass Bud" and EM's "boAt Bass Heads", as well as on the finding that the trade dress and colour combination of the rival logos of IMPL and EM was similar. In the absence of any such assertion in the plaint, it is submitted that the learned Single Judge could not have relied on similarity in the colour of the logos, their get-ups or the perceived similarity in the taglines UNPLUG YOURSELF and PLUG INTO NIRVANA, to support her findings. The learned Single Judge has, therefore, relied on irrelevant considerations, which also vitiates the impugned order.

26. It is further submitted that IMPL has sought to mislead the Court and has approached the Court with unclean hands. This, by itself, it is submitted, is a factor which would disentitle it to injunction. This argument is predicated on the reliance by IMPL on the e-mail dated 14 September 2019 of Ankit Kothari. On the strength of the said e-mail, IMPL seeks to contend that there was proof of actual customer confusion. The e-mail was, however, a fabricated email, as Ankit Kothari was, in fact, in regular touch with Varun Gupta much prior to sending the said email, regarding comparative pricing of the brands. Reliance on such a concocted and manufactured email, it is submitted, is sufficient to non-suit IMPL. It is further submitted that the learned Single Judge has completely missed this point, as is apparent from her observation, in para 22 of the impugned judgment, that the mere fact that Ankit Kothari was in constant touch



with EM would not mitigate the likelihood of confusion among the consuming public.

27. The assertion of IMPL that Varun Gupta was a distributor of IMPL is denied. It is emphasized that Varun Gupta had never been a distributor of IMPL, and that IMPL had never conducted any business with him.

28. The findings of the learned Single Judge regarding *mala fides* and dishonest adoption, as returned against EM, are, it is submitted, without any justification whatsoever. In arriving at the said findings, the learned Single Judge has completely ignored para 2(d) of the written statement filed by EM, in which EM had explained the



reasoning for adopting the logo , thus:

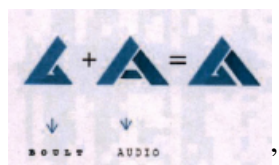
“2(d). That, further, in order to do the further branding of its products, the Defendant also designed and created it unique



artistic logo . The said logo was created by the Defendant by joining the first alphabets of the Defendant's trade name/ trade mark "Boult Audio" which” is also written under the said logo. A visual representation of how the Defendant's trade





mark was created is given hereinbelow:





It is submitted that the learned Single Judge has not appreciated the


fact that the adoption of the logo  was, therefore, by

combining the logos  and  and that, therefore, the adoption was honest and not imitative in any way.

29. Mr. Sibal further submits that the learned Single Judge has erred in failing to take into account the nature of the consumer who would be dealing with the rival products. The finding of the learned Single Judge that the products would be purchased by persons of all strata of society, including children, it is submitted, is palpably erroneous. The products in question are tech products and would be purchased only by persons who are aware of such products, and certainly not by children. As the consumer segment which purchases the products of the rival products of IMPL and EM are enlightened consumers, who are aware of what they are purchasing, the likelihood of confusion, if any, is minimized. This factor, it is submitted, has been overlooked by the learned Single Judge.

30. The learned Single Judge has herself held that the case cannot be of one of infringement, as EM's mark is registered. The case is, therefore, only of passing off. In the case of passing off, submits Mr. Sibal, added matter is of relevance, as has been held by the Supreme Court in *Kaviraj Pandit Durga Dutt Sharma v Navaratna*



Pharmaceuticals Laboratories¹⁰. If, therefore, the defendant is able to point out that the added matter which is present in the plaintiff's and defendant's marks is sufficient to minimize the likelihood of confusion, no case of passing off can be said to have been made out. The rival marks in the present case, it is submitted, are completely dissimilar in appearance. The boAt mark of IMPL has no similarity whatsoever with the  mark of EM. The finding of the learned Single Judge that there is deceptive similarity between the marks is, therefore, it is submitted, *prima facie* perverse and is liable to be set aside.

31. It is further submitted that the learned Single Judge has placed exaggerated and undue reliance on the perceived phonetic similarity between "BOAT" and "BOULT". 90% of the sales of the products of IMPL and EM admittedly took place online, so that the possibility of consumers being confused between the products on account of any phonetic similarity between boAt and BOULT, it is submitted, hardly exists.

32. Moreover, the learned Single Judge has erroneously relied on the judgment of the Supreme Court in ***K.R. Chinna Krishna Chettiar v Shri Ambal & Co.***¹¹ to support her finding that phonetic similarity alone could also constitute a legitimate ground to grant injunction. ***K.R. Chinna Krishna Chettiar***, it is submitted, was not a case which dealt with passing off but was an infringement suit. The learned Single


¹⁰ AIR 1965 SC 980


¹¹ AIR 1970 SC 146



Judge has, therefore, erroneously adopted, to a case of passing off, principles which are more appropriately applicable in a case of infringement.

33. Mr. Sibal also joins issue with the observation, by the learned Single Judge, that the adoption of the mark BOULT by EM was dishonest. There is no basis, it is submitted, for such a finding. Even if it were to be assumed that EM was aware of the use of the existence of IMPL's mark, before it commenced use of its BOULT mark, that would not *ipso facto* mean that the adoption of the mark by EM was dishonest. Knowledge of the existence of the mark of the plaintiff would not lead to an unacceptable conclusion that the adoption of the rival mark of the defendant was unnecessarily dishonest. No evidence of *mala fides* were available on record and, therefore, the finding of dishonest user, as returned by the learned Single Judge, it is submitted, is unsustainable in law.

34. In any event, it is submitted that EM had discontinued use of all marks except  as well as the tagline UNPLUG

YOURSELF. EM was also intending to discontinue use of  mark by 6 August 2025. Thereafter, EM intends to use the mark GOBOULT.

35. The mark GOBOULT, it is submitted, cannot be said, by any stretch of imagination, to be deceptively similar to the boAt marks of



IMPL. It is submitted that EM cannot be interdicted from use of the mark GOBOULT, as it is clearly not similar, much less deceptively similar, to IMPL's boAt marks.

Submissions of learned Senior Counsel for IMPL

36. Responding to these submissions, learned Senior Counsel for IMPL submit that the decision of the learned Single Judge is well reasoned and does not merit interference, within the parameters of the law declared by the Supreme Court in *Wander Ltd. v Antox India Pvt Ltd.*¹² The learned Single Judge has herself held that the case is not one of infringement and has correctly applied the principles applicable to passing off. She has gone on the overall similarity of the rival marks and has come to a finding that the marks themselves, along with the associated adoption, by EM, of the name “Boult Bass Bud”, which was similar to “boat Bass Heads” and the tagline UNPLUG YOURSELF, which was an obvious adaptation form PLUG INTO NIRVANA was likely to result in consumers mistaking EM's products for IMPL. Thus, the learned Single Judge had also taken into account added material while arriving at the finding of passing off. The decision cannot, therefore, be said to be contrary to the law laid down by the Supreme Court in *Kaviraj Pandi Durga Dutt Sharma*.

37. The learned Single Judge has, in this context, also returned a finding of existence of goodwill, in favour of IMPL, in para 10 of the impugned judgment.

¹² 1990 Supp SCC 727



38. Apropos the contention of EM that, without any prayer to that effect, the learned Single Judge has erroneously enjoined the use of the tagline UNPLUG YOURSELF, learned Senior Counsel submit that, while exercising jurisdiction under Order XXXIX Rules 1 and 2 of the CPC, the learned Single Judge was well within her authority in granting such an injunction even if there was no formal prayer to that effect. In any event, submits learned Senior Counsel, they have no objection to EM using the tagline UNPLUG YOURSELF alone or by itself, and object to the use of said tagline only in conjunction with the

marks ,  and .

39. Apropos the aspect of likelihood of confusion, learned Senior Counsel have placed reliance on the following emails:

“Regarding faulty boult Earphones

Wed, Apr 17, 2019 at 8.29 AM

subhash chandra bsubhash265@gmail.com

To: info@imaginemarketingindia.com

Hii,

I was taken this earphones from amazon i need to replace it.

Name- B subhash chandra

E-mail bsubhash265@gmail.com

address-6-45/A/22, near pjr stadium, chandanagar, hyderabad-500050

Colour- red and black

Model- Boult Audio ProBass Curve Neckband Wireless Bluetooth in-Ear Earphones with mic (Red)

“Boult silver earphones_under one year replacement warranty



Sat, May 18, 2019 at 3.31 PM

Arpita Pathak <arpita14.pathak@gmail.com>

To: info@imaginemarketingindia.com

Hi Team,

I have bought "Boult Silver Toned Basswood Wooden Xtra Bass Earphones with Mic BA BASSWOOD4 3° from Myntra in September 2018 and this product has stopped working and it is under warranty (one year replacement). Can you please help me with this or redirect me through the right channel?

Regards,
Arpita"

40. Even at the time when EM commenced use of the



marks, it is pointed out that IMPL's turnover was over ₹ 106 crores. EM was, therefore, by adopting a deceptively similar marks as well as a tagline which was similar to that of IMPL, clearly attempting to ride on the goodwill earned by IMPL.

41. Apropos the mark GOBOULT, IMPL has, in its written submissions, stated that it was objecting to use of the said mark as it was in violation of the "safe distance principle".

Analysis

42. Three aspects arise for consideration in the present case, apropos the marks in consideration, viz. (i) whether the learned Single Judge was justified in injuncting the use, by EM, of the tagline UNPLUG YOURSELF, without any such prayer having been made in



the suit, or in the application, (ii) whether the impugned judgment of the learned Single Judge, injuncting the use of the marks



by EM, is sustainable in law and (iii) whether EM would be entitled to use the mark GOBOULT.

43. At the cost of repetition, we dispose, at the outset, of issues (i) and (iii), since their answer is more or less self-evident.

44. Re. challenge to injunction against use of tagline UNPLUG YOURSELF

44.1 There having been no prayer for injuncting the use of the tagline UNPLUG YOURSELF, the learned Single Judge could not have granted an injunction in that regard. Grant of interim injunction against the use of the tagline UNPLUG YOURSELF is, therefore, clearly unsustainable in law, as the learned Single Judge appears to have proceeded on the mistaken premise that there was a formal prayer for injuncting the use of the tagline UNPLUG YOURSELF. This impression might have been conveyed because it was pleaded, in the plaint, that the use of the tagline UNPLUG YOURSELF, was also creating confusion. Needless to say, a mere pleading to that effect would not substitute the requirement of a formal prayer for injuncting the use of the tagline, if IMPL so desired. It is for the plaintiff to choose the prayer that it seeks to make, and the Court could not have



granted a relief not sought by the plaintiff. In *State of Uttarakhand v Mandir Sri Laxman Sidh Maharaj*¹³, it was held, in para 24:

“.....The courts below also should have seen that courts can grant only that relief *which is claimed by the plaintiff in the plaint* and such relief can be granted only on the pleadings but not beyond it. In other words, courts cannot travel beyond the pleadings for granting any relief. This principle is fully applied to the facts of this case against the plaintiff.”

(Emphasis supplied)

In a suit for recovery of possession under Section 6 of the Specific Relief Act, 1963, the Trial Court additionally directed removal of certain constructions on the suit property. The Supreme Court held that this could not be done, in *Mahabir Prasad Jain v Ganga Singh*¹⁴:

“24. As already pointed out, the decree passed by the trial court as affirmed by the High Court travels beyond the prayer in the plaint and also the scope of Section 6 of the Specific Relief Act. Apart from granting a decree for possession as prayed for by the respondent, the trial court has granted an additional relief which was not prayed for by him in that the trial court has directed the appellant to remove the construction put up by him including the dismantling of the glass. Such a relief cannot be granted under the provisions of Section 6 of the Specific Relief Act, particularly when there is no prayer therefor in the plaint.”

Relief beyond that prayed cannot be granted on sympathetic grounds either, as held in *Akella Lalitha v Konda Hanumantha Rao*¹⁵:

“16. Coming to address the second issue, while this Court is not apathetic to the predicament of the Respondent grandparents, it is a fact that absolutely no relief was ever sought by them for the change of surname of the child to that of first husband/son of respondents. It is settled law that relief not found on pleadings should not be granted. If a Court considers or grants a relief for which no prayer or pleading was made depriving the respondent of

¹³ (2017) 9 SCC 579

¹⁴ (1999) 8 SCC 274

¹⁵ 2022 SCC OnLine SC 928



an opportunity to oppose or resist such relief, it would lead to miscarriage of justice.

17. In the case of *Trojan & Co. Ltd. v Rm. N.N. Nagappa Chettiar*¹⁶, this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under:—

“It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.”

18. In the case of *Bharat Amratlal Kothari v Dosukhan Samadkhan Sindhi*¹⁷ held:

“Though the Court has very wide discretion in granting relief, the Court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner.”

(Italics in original; underscoring supplied)

44.2 In the absence of a formal prayer to that effect, therefore, we are clear that the learned Single Judge could not have enjoined the use of the tagline UNPLUG YOURSELF.

44.3 The impugned judgment, to the extent it enjoins the use, by EM, of the tagline UNPLUG YOURSELF, is, therefore, liable to be set aside.

45. Re. use of the mark GOBOULT

¹⁶ AIR 1953 SC 235

¹⁷ (2010) 1 SCC 234



45.1 Insofar as the prayer for permission to use the mark GOBOULT is concerned, this prayer was never made before the learned Single Judge, who has not, therefore, applied her mind thereto.

45.2 The injunction that has been granted by the learned Single

Judge extends only to ,  and .

There is no injunction against the use, by EM, of the mark GOBOULT. The impugned judgment does not even state that EM is enjoined against use of any mark which is deceptively similar to IMPL's registered trade marks, as could result in extending the injunction to the mark GOBOULT, even if it were to be assumed that IMPL's submissions that the mark GOBOULT is also deceptively similar to its marks were to be accepted.

45.3 It is true that the impugned order generally grants the prayer for injunction against passing off in respect of the respondent's registered trade mark Nos. 2828749, 2828750, 2828752, 4038057, 3456800 and 3907213. That, however, is a generalized direction and, in case the appellant adopts a different mark – such as GOBOULT – it would be for the respondent to institute a fresh challenge to the use of the said mark, on the ground that it results in passing off. Whether the appellant would succeed in such a challenge, it would be premature for us to opine.

45.4 We, therefore, can find no reason why EM cannot use the mark GOBOULT. Neither was there any challenge to the use of the mark



before the learned Single Judge nor the learned Single Judge, expressly or by necessary implication, enjoined the use of the mark GOBOULT.

45.5 In the event that IMPL regards the mark GOBOULT as also being deceptively similar, it would be for IMPL to challenge the use of the mark separately in accordance with law, if so advised.

46. Re. injunction against use of the marks



46.1 That leaves, for consideration, only the challenge, to the injunction granted by the learned Single Judge, to the use of the marks



46.2 This issue may have largely become academic, as EM has categorically stated that it has discontinued the use of all marks except



and was intending to discontinue the use of the said mark also in August 2025. Nonetheless, the correctness of the judgment of the learned Single Judge has been seriously contested and, therefore, we are compelled to return our findings thereon.

46.3 Scope of interference



46.3.1 Appeals against interlocutory orders passed by the Commercial Court in applications under Order XXXIX of the CPC are appeals on principle. The appellate Court does not substitute its subjective view for the view adopted by the learned Commercial Court, even if it feels that the view that it has itself adopted is more appropriate or suitable. It is only if the view adopted by the learned Commercial Court is completely perverse, and not a view which any person, aware of the facts and the law, could possibly adopt, that the appellate Court would interfere with the exercise of discretion by the learned Commercial Court. Else, the remit of the appellate Court is only to examine whether the learned Commercial Court has applied the correct principles. If it has, and has not acted perversely in doing so, the appellate Court will not interfere. Errors in application of principle are, however, vulnerable to collection.

46.3.2 This position stands authoritatively settled by the Supreme Court in *Wander Ltd v Antox India Pvt Ltd*¹⁸:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion *except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions*. An appeal against exercise of discretion is said to be an appeal on principle. *Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of*

¹⁸ 1990 Supp SCC 727



*discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in **Printers (Mysore) Private Ltd. v Pothan Joseph**¹⁹:*

“... These principles are well established, but as has been observed by Viscount Simon in **Charles Osondon & Co. v Jhanaton**²⁰ ‘...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case’.”

46.3.3 Wander stands recently reiterated, by the Supreme Court, in its decision in **Pernod Ricard India (P) Ltd v Karanveer Singh Chhabra**²¹, which also relies, for the purpose, on the following exposition from **Ramakant Ambalal Choksi v Harish Ambalal Choksi**²²:

“32. In **Anand Prasad Agarwal v Tarkeshwar Prasad**²³, it was held by this Court that it would not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction.

33. The burden is on the plaintiff, by evidence *aliunde* by affidavit or otherwise, to prove that there is “a prima facie case” in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition precedent for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that

¹⁹ AIR 1960 SC 1156

²⁰ 1942 AC 130

²¹ 2025 SCC OnLine SC 1701

²² 2024 SCC OnLine SC 3538

²³ (2001) 5 SCC 568



non-interference by the court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that “the balance of convenience” must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit. (See: *Dalpat Kumar v Prahlad Singh*²⁴)”

46.3.4 Again, in *Brihan Karan Sugar Syndicate (P) Ltd v Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana*²⁵, the same position is briefly reiterated in para 11, thus:

“11. We may note here that we are referring to the rival contentions in detail only because very detailed submissions were made before us. But we are conscious of the fact that we are dealing with an interim order passed during the pendency of an appeal against the decree and that the appeal is pending. The appeal has been admitted for hearing. *While dealing with the prayer for a stay of execution of the decree subject-matter of challenge, it was not necessary for the High Court to make an in-depth consideration of the merits of the appeal. Only a prima facie consideration was required to be made by the High Court.* One of the relevant factors which was considered by the High Court was that in the suit filed by the appellant, the relief of temporary injunction was denied to the appellant.”

(Emphasis supplied)

²⁴ (1992) 1 SCC 719

²⁵ (2024) 2 SCC 577



46.3.5 We will not, therefore, second-guess the impugned judgment. We are concerned only with whether the learned Single Judge adopted and applied the correct principles and, if she did, whether the application of the principles was vitiated by perversity or *ex facie* illegality. On issues of subjective discretion, such as the aspect of deceptive similarity, we will not sit in appeal, or seek to even examine whether the discretion could have been more appropriately exercised in another manner.

46.4 Thus viewed, we are unable to discern a case deserving of interference, except, as already noted, to the extent the learned Single Judge has enjoined the use, by EM, of the tag line “UNPLUG YOURSELF”, though it was not sought in the suit.

46.5 The injunction against the use, by EM, of the marks



has been granted by the learned Single Judge by applying the correct principles. We have already enumerated the reasons cited by the learned Single Judge in arriving at her conclusions, and they are legally sound. We do not deem it necessary to repeat them *ad nauseam*.

46.6 The learned Single Judge has correctly held that, as the



mark of EM was registered under the Trade Marks Act, no case of infringement could lie against it, as infringement, per



definition in Section 29 of the Trade Marks Act, lies only against a person who is not a registered proprietor of a trade mark.

46.7 The learned Single Judge has, thereafter, proceeded to apply the principles of passing off.

46.8 Passing off takes place when one person, by adopting a trade mark or trade dress which closely resembles another's, seeks to pass off his products as that of the other. Though it is classically a tort of deceit, a plaintiff is not required, inexorably, to prove malafides on the part of the defendant to succeed in obtaining an injunction on the ground of passing off. It is enough if the plaintiff is able to establish, to the satisfaction of the Court, that the defendant has adopted a deceptively similar mark, or trade dress, or has resorted to some other means as would result in the defendant's goods being likely to be purchased, believing them to be the plaintiff's.

46.9 The difference between infringement and passing off, apart from the fact that infringement is a statutory tort, governed by the provisions of Section 29 of the Trade Marks Act whereas passing off is a common-law tort, is that passing off requires three ingredients to be satisfied before the tort can be said to have been committed. These are (i) goodwill, (ii) misrepresentation and (iii) damage. The mark asserted by the plaintiff must be shown to have amassed sufficient goodwill, before the defendant adopted the deceptively similar mark. The defendant must have misrepresented its goods or services to be those of the plaintiff, even unwittingly, by adoption of such a similar



mark. The plaintiff must have suffered damage as a result of the act of passing off committed by the defendant. If these factors coalesce, passing off as taken place, and the plaintiff is entitled to injunction and damages.

46.10 Goodwill has to be established by empirical data. Generally, the plaintiff is required to demonstrate that, by using the asserted mark, the plaintiff has sufficient turnover, or earnings, as it would indicate that the mark has garnered a reputation in the market. Additionally, the plaintiff is generally required to also demonstrate that it has incurred considerable expense in advertising and promoting the mark. These are primary considerations which demonstrate the acquisition, by the mark asserted by the plaintiff, of the requisite degree of goodwill. Apart from these, the plaintiff is also at liberty to furnish additional data to substantiate the plea of goodwill in the asserted mark, to indicate increased penetration in the public psyche.

46.11 The principles in this regard have recently been enunciated by the Supreme Court in *Brihan Karan Sugar Syndicate*:

“12. There is a finding recorded by the High Court in the impugned judgment that the labels used on the bottle of country liquor sold by the appellant and the labels on the bottle of country liquor sold by the respondent are similar. At this stage, we may note the legal position regarding the factual details which are required to be proved in a passing off action. Firstly, we may refer to a decision of this Court in *Satyam Infoway Ltd. v Siffynet Solutions (P) Ltd.*²⁶ Paras 13 to 15 of the said decision read thus:

“13. The next question is, would the principles of trade mark law and in particular those relating to passing off

²⁶ (2004) 6 SCC 145



apply? An action for passing off, as the phrase “passing off” itself suggests, is to restrain the defendant from passing off its goods or services to the public as that of the plaintiff's. It is an action not only to preserve the reputation of the plaintiff but also to safeguard the public. The defendant must have sold its goods or offered its services in a manner which has deceived or would be likely to deceive the public into thinking that the defendant's goods or services are the plaintiff's. The action is normally available to the owner of a distinctive trade mark and the person who, if the word or name is an invented one, invents and uses it. If two trade rivals claim to have individually invented the same mark, then the trader who is able to establish prior user will succeed. The question is, as has been aptly put, who gets these first? *It is not essential for the plaintiff to prove long user to establish reputation in a passing off action. It would depend upon the volume of sales and extent of advertisement.*

14. The second element that must be established by a plaintiff in a passing off action is misrepresentation by the defendant to the public. The word “misrepresentation” does not mean that the plaintiff has to prove any mala fide intention on the part of the defendant. Of course, if the misrepresentation is intentional, it might lead to an inference that the reputation of the plaintiff is such that it is worth the defendant's while to cash in on it. An innocent misrepresentation would be relevant only on the question of the ultimate relief which would be granted to the plaintiff [Cadbury-Schweppes (Pty) Ltd. v PUB Squash Co. (Pty) Ltd.²⁷, Erven Warnink Besloten Vennootschap v J. Townend & Sons (Hull) Ltd.²⁸]. What has to be established is the likelihood of confusion in the minds of the public (the word “public” being understood to mean actual or potential customers or users) that the goods or services offered by the defendant are the goods or the services of the plaintiff. In assessing the likelihood of such confusion the courts must allow for the “imperfect recollection of a person of ordinary memory” [Aristoc Ltd. v Rysta Ltd.²⁹].

15. The third element of a passing off action is loss or the likelihood of it.”

(emphasis supplied)

²⁷ 1981 RPC 429 : (1981) 1 WLR 193

²⁸ 1979 AC 731 : (1979) 3 WLR 68 : 1980 RPC 31 (HL)

²⁹ 1945 AC 68 (HL)



13. Thus, the volume of sale and the extent of advertisement made by the appellant of the product in question will be a relevant consideration for deciding whether the appellant had acquired a reputation or goodwill.

14. At this stage, we may also refer to the decision of this Court in *Toyota Jidosha Kabushiki Kaisha v Prius Auto Industries Ltd.*³⁰. In this decision, this Court approved its earlier view in *S. Syed Mohideen v P. Sulochana Bai*³¹ that the passing off action which is premised on the rights of the prime user generating goodwill, shall remain unaffected by any registration provided in the Act. In fact, this Court quoted with approval, the view taken by the House of Lords in *Reckitt & Colman Products Ltd. v Borden Inc.*³². The said decision lays down triple tests. One of the tests laid down by the House of Lords was that the plaintiff in a passing off action has to prove that he had acquired a reputation or goodwill connected with the goods. Thereafter, in para 40 of *Toyota*, this Court held that if goodwill or reputation in a particular jurisdiction is not established by the plaintiff, no other issue really would need any further examination to determine the extent of the plaintiff's right in the action of passing off.”

46.12 A reading of the impugned judgment reveals that the learned Single Judge has dealt with each of these relevant aspects, while

arriving at the finding that the use of the marks



and **SOULT AUDIO**, by EM, resulted in passing off, of the products of EM as those of IMPL. We may reproduce, in this regard, the relevant paragraphs from the impugned judgment:

“18. *Indubitably, the plaintiff is the prior user of the trademark BOAT for the same category of goods with similar descriptions and had an established market when the defendant's son acted as a consultant for a distributor of the plaintiff's product even as per its own averment. Thus, the defendant was aware of the mark of the plaintiff. There being phonetic similarity between BOAT and*

³⁰ (2018) 2 SCC 1

³¹ (2016) 2 SCC 683

³² (1990) 1 WLR 491 (HL)



BOULT, the defendant's *BOULT* is deceptively similar to the plaintiff's mark. ...

21. *The class of users of the product sold by the plaintiff and defendant is all strata's of the society including children as well. The similarity between the two marks has not to be adjudicated by way of a precision but the manner in which the senses perceive a fact and retain it in the memory. BOAT and BOULT being quite phonetically similar, a consumer would not have a correct complete and reflection when he goes to buy the product whether the product is of BOAT or BOULT because of the first two and the last alphabet of the two words being the same. Further, the logo of the two products is also similar in the form of a triangle. The tagline also uses the word PLUG in both so as to cause a deception. As held by this Court in **Hindustan Sanitaryware (supra)**³³ relied upon by learned counsel for the defendant, a mark has to be looked into as a whole and on looking at it as a whole, if there is a phonetic similarity resulting in every likelihood of deception the plaintiff would be entitled to grant of injunction. Learned counsel for the defendant has also contended that the defendant is into this business since the year 2017 and besides manufacturing goods has invested huge amounts in promotion and advertising. Once the Court comes to the conclusion that the adoption of the mark, logo and tagline by the defendant is dishonest in order to ride on the good-will of the plaintiff's product, then merely because the defendant is using it since 2017 or has invested huge amounts in promotion and advertising would not tilt the balance of convenience in favour of the defendant. In the present case the defendant is not only using trademark, logo and tagline deceptively similar to that of the plaintiff, but is also using deceptively similar name for its product i.e. "*BoultBassBud*", and has also adopted a similar get up and colour scheme for its products and packaging."*

(Emphasis supplied)

46.13 The learned Single Judge has, in these paragraphs, held that

- (i) IMPL is the prior user of the boAt marks,
- (ii) IMPL had an established market when Varun Gupta was acting as consultant or a distributor of IMPL's product, and
- (iii) the rival marks were deceptively similar to each other as

³³ **Hindustan Sanitaryware and Industries Ltd v Champion Ceramic, (2011) 45 PTC 260 (Del)**



- (a) they were phonetically similar,
- (b) they employed logos which were also visually similar, as they were both triangular in shape, and
- (c) they employed a similar tag line, with the common use of the word PLUG.

On whether these factors were sufficient to create likelihood of confusion, we would not like to comment, as the decision pertains to the realm of subjective discretion of the learned Single Judge and is, therefore, no man's land for us, applying *Wander*. Clearly, no arbitrariness, much less perversity, can be said to exist in the manner in which the learned Single Judge has exercised her discretion.

46.14 We are not convinced with the submission of learned Counsel for EM that phonetic similarity has no relevance where products are sold online. The perception of the consumer with average intelligence and imperfect recollection, as held in *Brihan Karan Sugar Syndicate*, has to form the litmus test even in cases of passing off. Names reside in the human psyche as much because of their sound as because of their appearance, when presented as logos. The possibility of likelihood of confusion for passing off cannot be viewed solely on the basis of a hypothetical situation in which the consumer purchases the product online and has both products before him on the screen. The fact that the products are sold in brick-and-mortar stores is not in dispute. Besides, even when the products are sold online, if the consumer is unable to exactly recollect the name of the product which he wants, the possibility of likelihood of confusion always exists. Though, therefore, the aspect of phonetic similarity may be of



somewhat lesser significance when the products are sold online, it cannot be said to be altogether irrelevant.

46.15 The contention of Mr. Sibal that, as no claim of passing off, vis-à-vis the tagline UNPLUG YOURSELF, or the name of the product BASS BOULT BUDS was made, the learned Single Judge, in relying on the similarity between these and the tagline PLUG INTO NIRVANA of IMPL and the name BOLT BASS HEADS, relied on irrelevant material, also fails to convince. It is trite that, in passing off claims, added matter is of relevance.³⁴ The added matter could either *mitigate* the likelihood of confusion, or *exacerbate* it. While it is open to the defendant in a passing off suit to argue that, owing to the added matter, the likelihood of confusion is diminished, it may also be that the similarity of the added matter enhances the likelihood of confusion. The learned Single Judge has found this to be one such case, and we find no reason to disagree with her.

46.16 The use, by EM, of the tagline UNPLUG YOURSELF is, *prima facie*, inspired by the tagline PLUG INTO NIRVANA of IMPL, especially as it is not in dispute that Varun Gupta was associated with the distribution of the products of IMPL, in whatsoever capacity, at some point of time. At a *prima facie* stage, therefore, it is reasonable to presume, as the learned Single Judge has, that, in coining the tagline UNPLUG YOURSELF, EM was, even if by way of a counterpoint, inspired by PLUG INTO NIRVANA. If the learned Single Judge felt that, owing to the common PLUG motif in the two

³⁴ Refer **Kaviraj Pt Durga Dutt Sharma**



taglines, a consumer of average intelligence and imperfect recollection is likely to be confused, we see no reason to differ, within the *Wander* constraints.

46.17 Similarly, the use of BASS BOULT BUDS as the moniker whereunder EM was selling its product has been found, by the learned Single Judge, to create confusion in view of the use, by IMPL, of BOAT BASS HEADS. Independently, it might be possible to argue that this single factor may not be sufficient to arrive at a *prima facie* finding of likelihood of confusion. Nor has the learned Single Judge so held. She has found this factor, seen in conjunction with the phonetic and visual similarity of the rival marks and the use of a deceptively similar tagline, to be likely to create confusion in the mind of the average consumer. Again, we see no reason to differ.

46.18 Exception was sought to be taken, by learned Senior Counsel for EM, with the observation of the learned Single Judge that the rival products were purchased by all strata of consumers, including children. We feel that needless emphasis is being placed, by learned Senior Counsel, on the reference to children. The products are not “high technology” products. They are speakers, ear pods, and the like, which are goods purchased in ordinary household commerce. We find no infirmity in the observation of the learned Single Judge that they are purchased by consumers from all strata of society. The learned Single Judge has also noted that the prices of the products are comparable. All these factors, too, we agree, are relevant, while assessing the possibility of confusion.



46.19 We may also observe, here, that, in assessing the possibility of confusion, the Court has to apply its own independent subjective discretion. While comparing the overall effect of the rival marks, along with other attendant aspects, the Court is not, therefore, constrained by pleadings. Expressed otherwise, even if a particular feature of the marks – for instance, similarity in shape, or the colours of the marks – is found to be likely to cause confusion, the Court has to take it into account, even if there is no specific pleading to the effect that confusion could be created because of similarity in shape or colour. The marks are, after all, before the Court, and there is no dispute about their features. The Court has, in such a case, to holistically compare the marks and, if a feature common to them is found likely to result in confusion, is bound to so hold, irrespective of whether it is so specifically pleaded, or not.

46.20 It is also settled, in law, that the plaintiff is only required to prove *likelihood* of confusion, and not *actual* confusion. Further, the issue of whether there is, or is no, likelihood of confusion, is a view that the Court has to take on the material before it by a subjective comparison, and is not dependent on evidence. As such, at this *prima facie* stage, we do not deem it necessary to enter into the e-mail of Ankit Kothari, or any other consumer, as they are relevant, if at all, only to prove *actual* confusion. On the other material available, we are of the clear view that the findings of the learned Single Judge regarding the existence of a *prima facie* case of passing off, cannot be said to be justifying of interference. Insofar as the allegations regarding the e-mail being misleading as Ankit Kothari was aware of



the activities of IMPL, are concerned, these are, in our view, appropriately subject matter of evidence and trial.


46.21 We also do not propose to comment on the finding of the learned Single Judge that the adoption of its marks by EM was dishonest. Dishonesty is not, as we have already noted, a necessary ingredient of a valid passing off action. Even *de hors* the finding of dishonesty, we are of the view that the ultimate decision of the learned Single Judge is sustainable in law.

46.22 We, therefore, find no cause to disturb the impugned judgment, save and except to the extent it injuncts the use, by EM, of the tagline UNPLUG YOURSELF.

Conclusion

47. As a result, the present appeal is disposed of in the following terms:

(i) The impugned judgment of learned Single Judge, insofar

as it injuncts the use, by EM, of the marks ,



and



BOULT AUDIO

, pending disposal of the suit, is affirmed.

(ii) The impugned judgment, insofar as it injuncts the use of the tagline UNPLUG YOURSELF is, however, set aside.



(iii) It is clarified that as the use of the mark GOBOULT by EM was never under challenge before the learned Single Judge, and the learned Single Judge has restricted the injunction only

specifically to use of the ,  and



marks, there is no restraint against use of the mark GOBOULT by EM. If IMPL desires to challenge the said use, that would form a separate cause of action which would have to be taken up in appropriate proceedings. Any such challenge, if initiated, by IMPL would, needless to say, be decided in accordance with law.

48. The appeal is disposed of in the aforesaid terms with no order as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

SEPTEMBER 15, 2025

dsn/ar/aky/yg