



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 10/04/2026*

+ **FAO-IPD 46/2021, CM APPL. 46817/2018 & CM APPL. 54484/2018**

**M/S FLIPKART INDIA PRIVATE LIMITED** .....Appellant

versus

**M/S MARC ENTERPRISES PVT LTD** .....Respondent

**Advocates who appeared in this case**

For the Appellant : Mr. Sandeep Sethi, Senior Advocate, Mr. Rajshekhar Rao, Senior Advocate with Mr. Nitin Sharma, Ms. Shilpa Gupta, Mr. Ranjeet Singh Sidhu, Mr. Kuber Mahajan, Mr. Naman Tandon, Mr. Krisna Gambhir and Ms. Shreya Sethi, Advocates.

For the Respondent : Mr. Ajay Amitabh Suman, Mr. Shravan Kumar Bansal, Mr. Rishi Bansal, Ms. Deasha Mehta, Mr. Aviral Srivastava and Ms. Ayushi Arora, Advocates.

**CORAM:  
HON'BLE MR. JUSTICE TEJAS KARIA**

**JUDGMENT**

**TEJAS KARIA, J**

1. The present Appeal has been filed under Order 43(1)(R) of the Code of Civil Procedure, 1908 (“CPC”) against the order dated 27.10.2018



(“**Impugned Order**”) read with order dated 30.10.2018 in T.M. No. 12 of 2018 passed by the learned Additional District Judge, Patiala House Courts, New Delhi (“**Trial Court**”).


**FACTUAL BACKGROUND:**

2. The Respondent filed the Suit before the learned Trial Court seeking a permanent injunction against infringement of the Mark ‘MARC’ (“**Respondent’s Mark**”), passing off, dilution, delivery up and rendition of accounts. The Respondent is in the business of selling and manufacturing electrical accessories and fittings, electrical equipment, electrical appliances, electrical apparatus and instruments. The Respondent had obtained registrations for the Respondent’s Mark, the details of which are as under:

<b>Trade Mark</b>	<b>Application No.</b>	<b>Class</b>	<b>Date</b>
MARC	420735	09	16.04.1984
MARC	420736	11	16.04.1984
MARC	420737	09	16.04.1984
MARC	911681	09	22.03.2000
MARC	911682	09	22.03.2000
MARC	1256037	09	18.12.2003

3. The Appellant is an e-commerce platform which hosts the goods of various companies including that of the Respondent and acts as a third-party website facilitating sale of goods. The Appellant further manufactures and sells its own products under various labels and Trade Marks. The Appellant



adopted the Marks ‘MARQ’, and ‘’ (“**Impugned Marks**”) for dealing in goods that are allied and cognate to the Respondent’s goods under the Respondent’s Mark. The Appellant further filed



Applications for the registration of the Impugned Marks, the details of which are as under:

TRADEMARK APPLICATION NO.	MARK	DATE OF APPLICATION	CLASS
3590087		12/07/2017 advertised on 28/08/2017	11
3589370	MarQ	12/07/2017	11
3589369	MarQ	12/07/2017	9
3590086		12/07/2017	9

4. *Vide* order dated 18.01.2018, the learned Trial Court granted an *ad-interim* injunction against the use of the Impugned Marks by the Appellant. The Appellant challenged the order dated 18.01.2018, before this Court in FAO 30/2018. *Vide* order dated 22.01.2018, passed in FAO 30/2018, this Court allowed the Appellant an extension until 30.01.2018 to clear its existing stock of televisions, microwave ovens and washing machines and accordingly, the order dated 18.01.2018 was modified to the aforesaid extent. FAO 30/2018 was disposed of *vide* order dated 01.02.2018 wherein the extension granted to the Appellant *vide* order dated 18.01.2018 was extended till 05.02.2018, and the direction was passed that any further request for extension shall be made before the learned Trial Court, which shall be decided by the learned Trial Court on its own merits independent of the observations of this Court.

5. The Appellant filed an application under Order XXXIX Rule 4 of the CPC for vacation of the *ad-interim* injunction order dated 18.01.2018.



Thereafter, by way of the Impugned Order, the Trial Court allowed the Respondent's application under Order XXXIX Rules 1 and 2 of the CPC and consequently dismissed the Appellant's application under Order XXXIX Rule 4 of the CPC.

6. Aggrieved by the Impugned Order, the Appellant has filed the present Appeal. *Vide* Order dated 12.11.2018, the operation of the Impugned Order was stayed. After completion of final arguments on behalf of the Parties, the Judgment in the Appeal was reserved on 24.12.2025. Thereafter, the Appellant filed C.M. No. 46/2026 under Order XLI Rule 27 read with Section 151 of the CPC seeking to place additional documents on record. The Application to bring the additional documents on record was allowed, subject to payment of costs of ₹2,00,000 by the Appellant to the Respondent within a period of four weeks.

**SUBMISSIONS ON BEHALF OF THE APPELLANT:**

7. The learned Senior Counsel for the Appellant made the following submissions:

7.1. The Appellant is in a business-to-business entity engaged in the business of wholesale cash and carry. In the month of July 2017, the Appellant decided to manufacture and sell large appliances like TVs, ACs, Washing Machines, Microwave Ovens, etc. The Appellant honestly adopted the Impugned Marks and represented them in a unique and distinctive manner in the month of July 2017. The Impugned Marks signify quality products / large appliances, which are made available to Indian consumers at affordable prices. To effectively represent its brand philosophy 'mark of quality', the



Appellant conceived the Impugned Marks, wherein the first three alphabets of the term 'mark' have been combined with 'Q' which signifies quality.

- 7.2. In all promotional materials the Impugned Marks have been represented all along with the House Mark 'FLIPKART', it has been held by the Supreme Court of the *United States of America in Arcona Inc. v. Farmacy Beauty LLC*, No. 20-1429, that the prominent use of house mark along with a mark significantly reduces, if not eliminate altogether the possibility of confusion. Further, articles published by third parties have also represented the Impugned Marks with the capital letter 'Q', i.e. the unique manner of depiction of the Impugned Marks and communicated to the public that the products manufactured and sold under the Impugned Marks emanate from the Appellant. Due to extensive online and social media marketing campaign of the Appellant's large appliances under the Impugned Marks, consumers, people in trade circles and the public at large associates large appliances under the Impugned Marks with the Appellant, further, they pronounce the Impugned Marks as 'Mar Queue'; and associate the capital letter 'Q' in the Impugned Marks with 'Quality made affordable' and / or 'Quality products at affordable prices'.
- 7.3. The Appellant has widely publicized the Impugned Marks through extensive online and social media marketing campaigns. There are independent / third parties' online articles published by prominent publishers / newspapers and websites, further, the launch of the


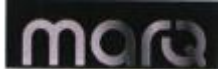



Appellant's products including microwave ovens, television sets and washing machines under the Impugned Marks were published through online articles.

- 7.4. The Appellant has launched its microwave ovens and television sets in the month of October 2017 and washing machines in the month of November 2017 under the Impugned Marks. Since the date of launch, the Appellant has been continuously selling microwave ovens, televisions, washing machines under the Impugned Marks through the website [www.flipkart.com](http://www.flipkart.com) (“**Appellant's Platform**”). The Appellant, since the date of launch, had sold 8,542 units of about Gross Merchandise Value of ₹6,91,00,000 under the Impugned Marks until 11.01.2018. The Appellant sells around hundred units of inventory under the Impugned Mark every day.
- 7.5. The Impugned Marks are structurally, phonetically, visually and conceptually dissimilar and distinct from the Respondent's Mark and the use of the Impugned Marks by the Appellant could not be associated with the Respondent. The Appellant sells its products under the Impugned Marks online exclusively through the Appellant's Platform and the online users will not get confused with the use of the Impugned Marks to believe that the same emanates from the Respondent. In *Esge AG v. Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, EC No. 207/2009, the General Court (Seventh Chamber) held that if the goods sold under the competing marks are sold primarily in self-service stores, then as a rule visual similarity between the competing marks will be more



important. Moreover, the Respondent does not manufacture and sell microwave ovens, washing machines and televisions. The Respondent manufactures and sells completely different products, i.e., water heaters, geysers, fans, air coolers, irons and hot plates only. Even if the Respondent wants to enter the market of the Appellant, then the Appellant will have a better right as the Appellant entered the relevant market prior to the Respondent as has been held in *Peshawar Soap and Chemicals Ltd. v. Godrej Soaps Ltd.*, 2001 (21) PTC 1 (Del). The Respondent's Mark is not distinctive, and the public at large does not associate the Respondent's Mark with the Respondent. A representation of the Impugned Marks and the Respondent's Mark is as under:

	<u>Appellant</u>	<u>Respondent</u>
Mark	marQ	M A R C
Representation	 marQ by Flipkart 	



- 7.6. The Respondent cannot claim exclusive monopoly over the word / expression ‘Marc’, ‘Mark’, or ‘Mar’. It is a matter of public record that the alphabets or words ‘Marc’, ‘Mark’, or ‘Mar’ are extensively used by various third parties either as Trade Name, Trade Mark, Brand Name or Corporate Name. Search results obtained from the Trade Marks Registry website itself indicate the existence of valid and subsisting registrations incorporating the word ‘Marc’, ‘Mark’, or ‘Mar’.
- 7.7. Further, information obtained from Ministry of Corporate Affairs regarding incorporated companies in India also demonstrates that there is extensive use of the word ‘Marc’, ‘Mark’, or ‘Mar’, as part of Trade Mark, Trade Name, trading style, etc. In view of such extensive usage of the words ‘Marc’, ‘Mark’, or ‘Mar’ no individual or entity can claim exclusive rights to the use of word / expression ‘Mar’. A perusal of the Trade Marks Registry yields the following results:

Class	TMs containing “MAR”		TMs containing “MARC”		TMs containing “MARK”	
	Regd.	Pending	Regd.	Pending	Regd.	Pending
7	201	112	16	14	28	13
9	35	15	331	178	68	35
11	154	133	20	9	9	12

- 7.8. The learned Trial Court gravely erred in passing the Impugned Order restraining the Appellant from using the Impugned Mark and observing that the judgment would be supplied to the Appellant on or



before November 2018. There was no urgency in the matter to first restrain the Appellant from using the Impugned Mark and then pass reasons for granting such injunction.

- 7.9. The Impugned Order was passed in violation of the principles of natural justice. There was no rationale for initially restraining the Appellant and providing reasons only on or before November 2018. There was no urgency justifying the issuance of an injunction order without providing reasons, particularly given that the relevant applications were pending before the Trial Court for approximately ten months, during which the Trial Court permitted the Appellant to sell products under the Impugned Marks after considering the balance of convenience. The Impugned Order does not specify the grounds for urgency nor clarify why both the injunction, and its supporting reasons could not have been issued simultaneously.
- 7.10. The Impugned Order is contrary to the judgments of the Supreme Court, that the court has to exercise caution as opposed to acting in haste while considering passing an order on an application seeking injunction. The learned Trial Court erred in passing the Impugned Order without stating any reasons as to how the Respondent has made out a case for granting injunction, particularly, when there are no reasons / arguments with respect to three basic ingredients of interim injunction, i.e., *prima facie* case, irreparable injury and balance of convenience.
- 7.11. The claim of the Respondent that the Respondent has conceived, coined and created the mark the Respondent's Mark is *ex facie* false.



There are third-party registrations which exist on the record of Registrar of Trade Marks in Classes 9 and 11 for the Trade Mark 'MARC' being registered in the name of parties prior and subsequent to the alleged date of adoption of the Respondent's Mark. The learned Trial Court has held that the Respondent's Mark and the Impugned Marks are not visually identical. However, without considering that the Appellant is selling its products online and consumer would search for 'marQ' for purchasing, and further relying on the extraneous material, the learned Trial Court held that the Impugned Marks are phonetically identical to the Respondent's Mark.

- 7.12. The learned Trial Court had done independent Internet search to ascertain the pronunciation of the Impugned Marks completely ignoring as to how the Impugned Marks are pronounced by the Appellant in the advertisement. In ***Bright Enterprises Private Limited & Anr. v. MJ Bizcraft LLP***, RFA(OS) Comm No. 8 of 2016, judgment dated 04.01.2017, this Court held that the judge could not himself become a witness in a case before him and that too without any opportunity of rebuttal or cross examination. The learned Trial Court applied different yardsticks for considering pronunciation of the Respondent's Mark and the Impugned Marks. Since there is no space between letter 'r' and 'Q' in the Impugned Marks, the letter Q cannot be pronounced separately as 'queue' and ignoring the significance of the capital letter 'Q'. However, the Respondent's Mark, 'MARC' would be pronounced as 'MARC'.



- 7.13. It has been held in various cases before the Supreme Court and this Court including in the judgments of *F. Hoffmann-la Roche & Co. Ltd. vs. Geoffrey Manner & Co. Pvt. Ltd.*, (1969) 2 SCC 716, *Nandhini Deluxe v. M/s Karnataka Cooperative Milk Producers Federation Ltd.*, CA Nos. 2937-2943 of 2018, *Skyline Education Instituted Pvt. Ltd. v. S.L. Vaswani*, (2010) 2 SCC 142, *Ranbaxy Laboratories v. Indchemie Health Specialities*, (2002) 24 PTC 510 and *Aviat Chemicals Pvt. Ltd. & Anr. v. Intas Pharmaceuticals Ltd.*, 2001 (21) PTC 601 (Del), held that the test of phonetic similarity is not sufficient to determine the infringing nature of the impugned marks.
- 7.14. In a case of infringement of Trade Mark where the two competing Marks are similar, the Respondent will have to prove that there is likelihood of deception and / or confusion amongst the members of public on account of use of a similar Trade Mark by the Appellant as has been held by the Supreme Court in the case of *Ruston & Hornsby Ltd. v. The Zamindara Engineering Qq.*, 1969 (2) SCC 727. Thus, in order to succeed, the Respondent must establish that the use of the Impugned Marks by the Appellant in relation to its large appliances is likely to lead to deception and / or confusion amongst the members of the consuming public.
- 7.15. Applying the test as laid down by the Supreme Court in *Cadilla Healthcare Limited v. Cadila Pharmaceuticals Ltd.*, (2001) 5 SCC 73, no case for likelihood of deception or confusion is made out as the Appellant is not manufacturing goods and products manufactured by the Respondent. The Supreme Court, in the case of *Vishudas Trading*



*As Vishnudas Kishendus v. Vazir Sultan Tobacco Co. Ltd.*, 1996 PTC (16) 512, held that a trader or manufacturer who actually trades or manufactures only one or some of the articles coming under a broad classification cannot be permitted to enjoy monopoly in respect of all the articles which may come under such broad classification and by that process preclude other traders or manufacturers from getting registration in respect of other goods.

- 7.16. In the case of *Dura Roof v. Dyna Roof*, 2017 (5) GLT 299, it was held that the nature of goods and the class of buyers who are likely to purchase the goods, their intelligence and education are important factors to be taken note of while considering the likelihood of confusion. Further, third party users are critical in determination whether there is likelihood of confusion and / or deception as has been held in *Corn Products Refining Co. v. Shangrila Food Products Ltd.*, AIR 1960 SC 142, *Rajesh Jain v. Amit Jain*, 2014 (60) PTC 526 (Del), *Skyline Education Institute (Pvt.) Ltd. v. S.L. Vaswani and Anr.*, (2010) 2 SCC 142.
- 7.17. In view of the above, the Impugned Order is arbitrary and perverse and deserves to be set aside.

**SUBMISSIONS ON BEHALF OF THE RESPONDENT:**

8. The learned Counsel for the Respondent made the following submissions:
- 8.1. The Respondent's Mark and the Impugned Marks are identical and deceptively similar not only through eye and ear but also in idea. Argument of the Appellant that the Impugned Marks are pronounced



as 'Mar Queue', is of no help as consumers pronounce the Respondent's Mark and the Impugned Marks in the same manner. Hence there is every possibility of confusion. Pronunciation of English words may not be the same for semi-literate population as has been held in *Cadbury India Ltd. v. Neeraj Food Products*, ILR (2007) II Delhi 1065. The similarity of the competing Marks and the likelihood of confusion is the test to determine infringement of Trade Mark as has been held in *Cadila Health Care* (supra). Further, the question of confusion and deception has to be looked from the view of a man of average intelligence and imperfect recollection as has been held in *Amritdhara Pharmacy v. Satya Deo Gupta*, AIR 1963 SC 449.

- 8.2. The Respondent is engaged in the business of manufacturing and marketing of electrical accessories, fittings, electrical equipment, domestic electronic appliances, electronic apparatus, and instruments etc and the Appellant is engaged in the business of manufacturing and marketing of televisions, air conditioners and washing machines, allegedly since the year 2017. The products involved of the parties in question are identical or similar viz. electrical appliances and that the same are sold through common trade channels. The class of customers and purchasers involved is also same.
- 8.3. The documents filed by the Appellant in support of user of the Impugned Marks show that the same were launched in the month of October 2017. The Respondent is the prior adopter and continuous user of the Respondent's Mark since the year 1981. The Respondent is



the prior registered proprietor of the Respondent's Mark in Classes 07, 09 and 11 since the year 16.04.1984. The Respondent has put on record the documents by way of bills and vouchers showing user of the Respondent's Mark at least since the year 1982. While the Appellant is alleged to have adopted the Impugned Marks in the year 2017.

- 8.4. All the Trade Mark registrations of the Respondent for the Respondent's Mark are legal, valid and subsisting. The Impugned Marks are identical with the Respondent's Mark and all of the Appellant's products are covered under the registrations for the Respondent's Mark. The Supreme Court in *M/s Kaviraj Pandit Durga Dutt Sharma v. M/s Navratna Pharmaceuticals*, AIR 1965 SC 980, held that in case of trade mark infringement if the plaintiff is able to establish similarity between the marks, then no more evidence is required.
- 8.5. The argument of the Appellant is that the possibility of confusion is diminished as the Appellant is selling its goods through internet exclusively, is misconceived as the products of the Respondent are also sold through internet that too on the website of the Appellant. The Respondent's products are also available and sold through India Mart. The Trial Court rightly observed that even if products of the Appellant are sold through the internet, this would not negate the chances of confusion. It has been held in *Exotic Mile v. Imagine Marketing (P) Ltd.*, 2025 SCC OnLine Del 5969, that even when the goods are sold



exclusively on the internet, phonetic similarity of the competing marks will still be relevant to a certain extent.

- 8.6. The use of the house mark of the Appellant along with the Impugned Mark does not negate confusion as has been held in *Renaissance Hotel Holdings Inc. v. B. Vijaya Sai*, 2022 SCC OnLine SC 61 and *Marico Limited v. Minolta Natural Care*, Neutral Citation: 2025:BHC-OS: 24054. In *Cotton Corporation of India Limited v. United Industrial Bank Limited and Ors.*, (1983) 4 SCC 625, it has been held that English judgments shall not be relied upon blindly but rather be relied upon only after keeping Indian legislation and Indian conditions in mind.
- 8.7. The Appellant is the dishonest adopter, fraudulent user of the Impugned Marks. The Trade Mark Applications for registration of the Impugned Marks were filed by the Appellant on 11.07.2017 as proposed to be used. Even as per the Appellant's documents, they have launched Impugned Marks in October 2017. Admittedly, the Respondent is the prior user and prior registered proprietor of the Respondent's Mark. The Appellant was aware of the Respondent's Mark at the time of adoption of Impugned Marks in the year 2017. Products of the Respondent are also sold through the website of the Appellant. The Respondent's Mark under Application No. 911681 was cited by the Registrar of Trade Marks in the Examination Report dated 09.08.2017 issued to the Trade Mark Application of the Appellant under Application No. 3590086. The Appellant has failed to discharge its onus of being an honest adopter of the Impugned Marks.



Therefore, the Appellant is not entitled for any type of relief from this Court.

- 8.8. The Appellant itself has applied for the registration of the Impugned Marks in relation to electrical appliances. When the Appellant itself has applied for the registration of the Impugned Marks before the Trade Marks Registry claiming rights in the Impugned Marks the Appellant is estopped from claiming that the Respondent's Mark is common to trade as has been held in the judgments of *The Indian Hotels Company Ltd v. Jiva Institute of Vedic Science and Culture*, 2008 (37) PTC 468 (Del) and *Automatic Electric Limited v. R.K.Dhawan*, 57 (1995) DLT 49. The Appellant has put on record the search report from the Trade Mark Registry in order to allege the Respondent's Mark to be common to trade. Merely filing of the search report, does not prove or does not in any way establish actual, substantial user constituting common to the trade. Further, common to the register is not the same as common to the trade as has been held in *Walter Bushnell Pvt Ltd. v. Miracle Life Sciences*, 2014 (59) PTC 229 (Del), *Pankaj Goel v. Dabur India*, 2008 (38) PTC 49 (Del) DB, *National Bell Company v. Metal Goods*, AIR 1971 SC 898, *Century Traders v. Roshan Lai Duggar*, AIR 1978 Delhi 250 and *Cadila Pharmaceutical v. Sami Khabib*, 2011 (47) PTC 69 Bom.
- 8.9. The Appellant has failed to point out any perversity in the Impugned Order. The Impugned Order is a well-reasoned order which has been passed after taking into consideration the facts of the case and law applicable thereto in right perspective. It is a well settled proposition



of law that in appellate jurisdiction the scope of interference by the Appellate Court is only limited to the extent of perversity. The Supreme Court in *Wander Ltd. v. Antox India Pvt. Ltd.*, 1991 PTC 1(SC), *Mohd. Mehtab Khan and others v. Khushnuma Ibrahim Khan and others*, (2013) 9 SCC 221, has held that appellate court will not interfere with the decision of the trial court until and unless there is apparent perversity.

8.10. In view of the aforesaid, there is no infirmity with the Impugned Order and the present Appeal deserves to be dismissed.

#### **ANALYSIS AND FINDINGS:**

9. The present Appeal has been filed against the Impugned Order passed by the learned Trial Court in exercise of its discretionary jurisdiction under Order XXXIX Rules 1 and 2 of the CPC.

10. The powers of the Appellate Court are confined to evaluating whether the interim injunction was granted in accordance with established legal principles applicable to the facts of the case. Where the law has been correctly applied and the discretion exercised is free from any perversity, the Appellate Court is not warranted to interfere, as affirmed by the Supreme Court in *Wander Ltd.* (supra) and *Mohd. Mehtab* (supra). The Appellate Court cannot substitute its own judgment for that of the trial court merely because it may consider an alternative view more appropriate or desirable. Intervention is permissible solely when the trial court's decision is clearly perverse and constitutes a conclusion no reasonable person, taking into account the relevant facts and legal standards, could have reached. Consequently, the central question for determination is whether the



Impugned Order issued by the learned Trial Court is fundamentally perverse and legally indefensible.

11. The Respondent is involved in the business of selling and manufacturing electrical accessories and fittings, electrical equipment, electrical appliances, electrical apparatus and instruments under the Mark 'MARC' and has the following registrations with respect to the Respondent's Mark:

<b>Trade Mark</b>	<b>Application No.</b>	<b>Class</b>	<b>Date</b>
MARC	420735	09	16.04.1984
MARC	420736	11	16.04.1984
MARC	420737	09	16.04.1984
MARC	911681	09	22.03.2000
MARC	911682	09	22.03.2000
MARC	1256037	09	18.12.2003

12. The Respondent is admittedly the prior user of the Respondent's Mark with user claim of 1981 and the first registration obtained for the Respondent's Mark in 1984. The Appellant admittedly adopted the Impugned Marks in 2017 for large electronic items such as televisions, air conditioners and microwaves, which is after the use of the Respondent's Mark for allied goods. The Respondent has also established that the Respondent's Mark is a uniquely coined term and that it is inherently distinctive. The goods that the Respondent is dealing in are covered by the registrations of the Respondent's Mark.

13. The Respondent's Mark and the Impugned Marks are nearly identical and deceptively similar. An average consumer of average intelligence and imperfect recollection is likely to get confused between the competing



Marks. The competing Marks are phonetically and structurally similar which is likely to cause confusion. In view of the phonetic and structural similarity between the competing Marks, the judgments in *F. Hoffmann-la Roche* (supra), *Nandhini Deluxe* (supra), *Skyline Education* (supra), *Ranbaxy Laboratories* (supra) and *Aviat Chemicals* (supra) do not further the case of the Appellant. The Respondent having proved that there is a likelihood of confusion between the Respondent's Mark and the Impugned Marks the judgments in *Ruston & Hornsby* (supra) and *Cadila Healthcare* (supra) do not help the case of the Appellant.

14. The Marks 'MARC' and 'MARQ' are phonetically as well as visually similar. Where the distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the phonetic similarity of those words as well as by their visual representation. As such, the use of the word 'MARQ' which is phonetically, structurally and visually similar to 'MARC', would also be an act of infringement. Even though the Appellant's goods are sold exclusively through the Appellant's Platform, which is an e-commerce platform, nonetheless, phonetic similarity between the two competing Marks will still hold relevance as has been held by this Court in the judgment of *Exotic Mile* (supra).

15. As per the anti-dissection rule, if the Respondent's Mark and the Impugned Marks are compared as a whole, they are deceptively similar and likely to cause confusion in the minds of the consumers with average intelligence and imperfect recollection. Mere addition of the House-Mark of the Appellant before the Impugned Marks does not eliminate the likelihood of confusion as has been held in the judgments of *Renaissance Holdings*



(supra) and *Marico Limited* (supra). The Appellant is required to prove that the added material is sufficient to distinguish the goods of the Appellant from that of the Respondent which is not demonstrated in the present case. An average consumer with imperfect recollection is likely to look at the product as a whole and would not be able to discern the minor differences in the rival Marks. The use of the House Mark 'Flipkart' along with the Impugned Marks is insufficient to distinguish the rival products when considered in the scheme of overall similarities of the rival Marks. The fonts and way of use the House Mark 'Flipkart' next to the Impugned Marks is miniscule. In some instances, the House Mark is not even used with the Impugned Mark. Therefore, the Appellant's reliance on use of House Mark 'Flipkart' in conjunction with the Impugned Marks is not helpful to the Appellant.

16. Further, common to register does not prove common to trade. Various marks containing the word 'Marc', 'Mark', or 'Mar' have been applied for or are pending before the Trade Marks Registry does not prove that they are in use as has been held in the judgments of *The Indian Hotels* (supra) and *Automatic Electric*. Further, plea of common use shall fail unless substantial usage by other persons is proven as has been held in *Walter Bushnell* (supra), *Pankaj Goel* (supra), *National Bell* (supra), *Century Traders* (supra) and *Cadila Pharmaceutical* (supra).

17. Trade Mark law aims to prevent consumer confusion about the origin or endorsement of goods and services. When evaluating the likelihood of confusion between Trade Marks, it is important to recognize that consumers typically focus on the overall impression or distinctive features of a mark,



rather than recalling its details with precision. Therefore, similarity between Trade Marks must be considered within the context of their market usage. Additionally, whether the goods or services associated with the competing Marks are identical or similar should be considered. In the present case, the Respondent's products are offered on the Appellant's platform, while the Appellant's products are sold exclusively through the same platform, indicating that both sets of goods are distributed through identical trade channels. Electronics and electronic items are accessible to all customer segments, and it cannot be claimed that internet and e-commerce purchases are restricted to a particular group. Therefore, the decision in *Dura Roof* (supra) does not support the Appellant's position. Consequently, the goods sold under the respective Marks are not only allied and cognate but also share common trade channels and an overlapping class of customers.

18. After the judgment in the present Appeal was reserved, the Appellant filed CM 46/2026 seeking to place additional documents on record depicting the Trade Mark Applications to show that the Appellant has obtained registration of the Mark, "Flipkart MarQ" and "MarQ by Flipkart" and, therefore, there is no infringement of the Respondent's Mark. It was further submitted by the Appellant that the registration of the trademark "Flipkart MarQ" and "MarQ by Flipkart" constitutes a supervening statutory event, which directly impacts the maintainability of the infringement claim, the legality and sustainability of any injunctive relief sought or granted against the Appellant and the balance of convenience and equities between the Parties.



19. The details of the Trade Mark Applications filed by the Appellant along with the status are as under:

S. No.	Application No.	Trademark	Class	Date of Application	Status
1	3890175	Flipkart MarQ	9	17.07.2018	Opposed by Plaintiff
2	3890176	Flipkart MarQ	11	17.07.2018	Opposed by Plaintiff
3	4299059	MarQ by Flipkart	7	20.09.2019	Opposed by Plaintiff
4	4299058	Flipkart MarQ	7	20.09.2019	Registered on 28.02.2020
5	4537413	MarQ by Flipkart	42	19.06.2020	Registered on 19.06.2021

20. Based on the above, the Appellant secured registration for the Marks “Flipkart MarQ” in Class 7 and “MarQ by Flipkart” in Class 42 after the issuance of the Impugned Order. Consequently, at the time the Impugned Order was passed, no registration existed in favour of the Appellant. Class 42 registration does not pertain to the products in question in the present matter. Regarding the Class 7 registration, only one electrical appliance, ‘Washing Machine’ is relevant to the facts of this case. The Mark “Flipkart MarQ” in Class 7 comprises two words: ‘Flipkart,’ the Appellant’s house mark, and ‘MarQ,’ for which separate registration has been sought by the Appellant, but not yet granted. Therefore, the Appellant cannot rely on the later registration of “Flipkart MarQ” at this stage by merely submitting an application to produce documents, without amending any grounds in the Appeal, despite having been aware of the registration since 28.02.2020.



21. Furthermore, the Impugned Order has found deceptive similarity between the Respondent's Mark and the Impugned Marks after a holistic comparison. As a result, the Appellant was restrained from using the Impugned Mark on its products, also based on grounds of passing off due to the prior use, goodwill, and reputation associated with the Respondent's Mark. Accordingly, the subsequent registration of the Mark, "Flipkart MarQ" in Class 7 does not have any impact on this Appeal or constitute a barrier to sustain the injunction granted against the Appellant by way of the Impugned Order.

22. At this *prima facie* stage and considering the settled law laid down in *Wander Ltd.* (supra) and *Mohd. Mehtab Khan* (supra), there is no justification for diverging from the conclusions reached by the learned Trial Court in the Impugned Order. The Impugned Order exhibits no manifest error, nor does the Trial Court's evaluation of the facts and legal principles present any irregularity. Accordingly, in exercise of appellate jurisdiction, it is not expedient to re-examine the sufficiency of evidence considered by the learned Trial Court. Accordingly, the Appellant has failed to show any arbitrariness or perversity with the Impugned Order and, accordingly, the Appeal is without any merit.

### **CONCLUSION**

23. For the aforesaid reasons, no interference is warranted in the Impugned Order dated 27.10.2018 and, accordingly, the Appeal along with the pending Applications are dismissed.

24. The stay of operation of Impugned Order granted *vide* Order dated 12.11.2018 is vacated. It is, however, made clear that the observations made



hereinabove are only *prima facie* in nature only for the purpose of deciding the present Appeal.

25. There shall be no order as to costs.

**TEJAS KARIA, J**

**APRIL 10, 2026**

'AK'

26. At this stage, after the pronouncement of the above Judgement, the learned Senior Counsel for the Appellant submitted that the Appellant may be granted a reasonable time to exhaust or withdraw the products using the Impugned Marks available in market to fully comply with the interim injunction.

27. The learned Counsel for the Respondent submitted that the Respondent would not have any objection to the said request provided it is only limited to granting extension of time to comply with the interim injunction.

28. Considering the above request and that the operation of the Impugned Order was stayed during the pendency of the present Appeal, the Appellant is granted time till 15.05.2026 to comply with the interim injunction granted *vide* Impugned Order.

**TEJAS KARIA, J**

**APRIL 10, 2026**

'AK'