

Understanding the Concept of Phonetic and Visual Similarity Vis-A-Vis To Letter Trademarks Through Judicial Precedents

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Abstract

The assessment of the distinctiveness of trademarks, despite the criteria outlined in the Trademark's Act of 1999, specifically under sections 9 and 11, presents a formidable challenge, often necessitating the discerning perspective of the judiciary. As a fundamental guiding principle, both examiner and courts are obliged to evaluate a trademark as a unified entity. In recent years, there has been a discernible rise in the scrutiny of phonetic similarities between marks. The legal framework for dealing with the infringement of a registered mark due to phonetic resemblance is encapsulated within section 29(9) of trademarks act 1999. This section expressly stipulates that a mark may be infringed by the oral as well as the visual representation of words. The Supreme Court has consistently affirmed the imperative need to consider both auditory and visual aspects when comparing trademark. This paper delves into an analysis of numerous judgements handed down by the Supreme Court and various High Courts, primarily focusing on the assessment of both phonetic and visual aspects of trademarks. Special emphasis has been placed upon letter trademarks and their susceptibility to both visual and phonetic infringement. While trademarks typically encompass various elements such as devices, color combinations, letters and images, letter trademarks, often consisting of a single letter with descriptive trade connotations, are generally considered weaker trade makers. To establish trademark rights in such instances compelling evidence of usage is requisite. Conversely, trademarks comprised of more than one letter, devoid of descriptive elements pertaining to goods and trade, are regarded as stronger trademarks. In cases where a letter trademark incorporates a unique device, it offers robust protection for the trademark. This paper references multiple case laws where esteemed courts have recognised unequivocally rights with respect to letter trademarks.

INTRODUCTION

In the contemporary business landscape, Intellectual Property stands as a cornerstone, offering a vital foundation for enterprise. Intellectual property encompasses a wide array of assets, including, copyright, trademarks, designs, geographical indications, patents, industrial designs, and integrated circuits, all of which serve as invaluable resources for any company. These assets not only safeguard a company innovation but also foster an environment of robust

competition, allowing manufacturers and traders to develop their products effectively while preventing the misappropriation of goodwill and intellectual property. Among these, the trademark emerges as a pivotal component of Intellectual Property Rights.

Under the aegis of the Trademarks Act of 1999, sections 2(zb)¹ precisely defined a “Trademark” as a mark that can be visually represented and possess the capability to distinguish the goods or service of one entity from another. This distinction extends beyond the mere identity of the goods to encompass their packaging combinations, and the use of colors. To comprehend the nuances of phonetic and visual similarity concerning Letter Trademarks, it is imperative to dissect the terminology. ‘Phonetics’ pertains to the comprehensive spectrum of sound integral to human speech production, whereas ‘Phonology’ focuses on the study of the distinct sets of sounds used within individual languages and their Visual representations. The term Phonetic refer to sound that resonate both in the ear and the eye. Notable examples of phonetic similarity include “WIPRO” and “EPRO,” “WET” and “JOY” versus “WET’N’JOY” and “SEYOS” and “SEIKO”. Conversely, an illustration of visual similarity is vividly portrayed through the two kingfisher birds featured in McDowell’s trademarks.

It is crucial to recognise that the trademarks act does not prescribe rigid criteria for evaluating the scope of deceptive similarity, thereby necessitating the intervention of judicial decisions to fill this void. Over the past few decade, numerous landmark cases have emerged, shedding light on trademark infringement and enhancing the clarity of this multifaceted concept. A thorough understanding of the concept is provided by these principles, which in turn make the resolution of disputes in this area easier. The establishment of guiding principles for legal enforcement, such as phonetic and visual resemblance, has been made possible by these decisions, the “rule of entirety”, the “rule of dis-intersection”, the “test of likelihood and confusion”, “goodwill”, and “recognizable reputation”.

The Statutory Principle

Section 9(1)(a) of the Trademark Act² prohibit the

¹ The Trademark Act, 1999 (Act 47 of 1999), s. 2(1)(z)(b)

² The Trademark Act, 1999 (Act 47 of 1999), s. 9(1)(a)

registration of marks lacking unique character, meaning they can’t distinguish one product from another. Section 11(1)(b)³ states that a mark similar to trademark used to similar goods service can’t be registered. The trademark registry assesses new application by comparing them with earlier marks, but act doesn’t specify the comparison method. Trademark Rule 33 outlines that the registry has the authority to scrutinize the newly proposed trademark in comparison to existing ones. However, it lacks explicit information regarding the specific steps involved in conducting this research. In case of trademark infringement, section 29(9)⁴ of the Trademark Act clarifies that a mark can be violated through spoken or visual usage of words. The Supreme Court in matters of infringement emphasizes considering both the sound and appearance of trademarks, highlighting phonetic similarity as a critical test for comparison, this add on phonetic similarity is crucial because similar sounding marks can mislead consumers, threaten trademark owners and harm the market and consumer’s welfare.

Passing Off Claim and Trademark Infringement Claim

In the realm of legal matters, it is imperative to difference between passing off claim and trademark. An illustrative example highlighting this distinction in the case of “*Durga Dutta Sharma v. N. P. laboratories*”⁵ case. Passing off is a legal remedy grounded in common law that hinges on deception. It involves one person misrepresenting their products as belonging to someone else. On the other hand, trademark infringement serves as a legal remedy stipulated by statutes to protect the exclusive rights of a registered trademark owner, enabling them to use their mark in association with their products.⁶ In a Passing off claim the defendant isn’t necessarily required to use the Plaintiff’s trademark. In contrast in an infringement claim, it is essential. When there can be instances

³ The Trademark Act, 1999 (Act 47 of 1999), s. 11(1)(b)

⁴ The Trademark Act, 1999 (Act 47 of 1999), s. 29(9)

⁵ *Durga Dutta Sharma v. N.P. Laboratories* 1965 AIR 980 1965 SCR (1) 737

⁶ *Cadila Healthcare Ltd. V. Cadila Pharmaceutical Ltd.* (2001) 5 SCC 73

where a registered trademark is deceptively used in a passing off case these claims are distinct in an infringement claim. The Plaintiff is required to show the defendant's use of their mark is likely to create confusion among consumers. In case where the marks are highly similar no further evidence is needed to establish a violation.

Simply put, in an infringement claim, if the defendant copies the core elements of the plaintiff's trademark, small differences in packaging or additional markings won't matter.⁷ However, in a Passing off claim, the defendant can avoid liability if they prove that these added elements distinguish their goods from the plaintiff's.

METHOD FOR DETERMINATION

The Hon'ble Supreme Court established the criteria for evaluating deceptive similarity in the 2001 case of "*Cadila Healthcare Ltd. v. Cadila Pharmaceutical Limited*".⁸ The court provided guidelines for this assessment, including consideration such as the nature of the products or services associated with the trademark, the degree of products or services associated with the trademark, the degree of similarity between the marks, the target consumer base, and the nature of the mark (whether it's a word, symbol, or phrase).

In "*Parle Products(P) Ltd. v. JP Co. Mysore*"⁹ case, the court introduced a test for determining deceptive similarity between two trademarks, it emphasizes that a detailed analysis of the marks isn't necessary; instead the overall similarity should be assessed based on the potential for confusion from the consumer's perspective, considering the viewpoint of an average person with an imperfect recollection.

Applying these standards to the case of "ASAVA" and "ASWA" both involved in the alcoholic beverages industry and likely to cater to a similar consumer

base, these marks are deceptively very similar. Both marks are simple words with substantial overall similarity. The division bench appropriately evaluated them from the consumer's viewpoint to reach a decision. Following a Bombay High Court ruling, the defendants appealed to the Supreme Court. The matter has been sent back to the commercial court for a final decision, which is pending.¹⁰ It is anticipated that the outcome of this hearing will help establish a more robust standard for assessing the similarity between these two trademarks.

Phonetic Evaluation in Trademark Confusion

When we're looking at how similar signs are, we consider their visual phonetic, and conceptual aspects. It's important to note that all three don't have to be similar; just one of them is enough. However, when we're trying to figure out if there's a likelihood of confusion overall, visual, phonetic, and conceptual similarity don't carry equal weight. Balancing these factors can yield results that might be unexpected.

In the case of T-117/20, decided on February 10, 2021, the General Court ("Hereinafter referred to as GC") ruled that even with strong phonetic similarity between two signs, differences in their visual and conceptual aspect, could nullify this similarity preventing confusion.¹¹

This case involved MKR design SRL applying for an EU trademark for the sign "PANTHE" for class 25 of goods. EL Corte Ingles, SA opposed this based on its figurative trademark "PANTHER" also for class 25 goods.

The European Union Intellectual Property Office ("EUIPO") initially rejected the opposition, which was confirmed by the board of appeal. The reason that despite the phonetic similarity between "PANTHE" and "PANTHER", the signs were visually and conceptual dissimilar.

El Corte Ingles took the matter to the general court, arguing that the phonetic similarity and identical goods should have been enough for a likelihood of confusion, given the principle of interdependence. They also disagreed with the board of appeal emphasising on the visual aspect and contested the claim of conceptual dissimilarity,

⁷ Rajat Sabu, "Deceptive Similarity In Trademarks With Respect To Medicinal Products Has A Threatening Effect- A Brief Overview", Mondaq, available at: <https://www.mondaq.com/india/trademark/923576/deceptive-similarity-in-trade-marks-with-respect-to-medicinal-products-has-a-threatening-effect--a-brief-overview>, (last visited on October 23, 2023).

⁸ *Supra* 6

⁹ *Parle Products(P) Ltd. v. JP Co. Mysore* 1972 AIR 1359

suggesting that consumers might perceive “PANTHE” as a misspelling of “PANTHER”.

The general court rejected El Corte Ingles argument, stating that a mere phonetic similarity didn't necessarily lead to a likelihood of confusion, even though the court acknowledged a “high” similarity. The court emphasised the prevalence of visual aspect when buying clothes and relied on the assumption that visual impression matters most in the fashion sector. However, the court didn't elucidate the reason for downplaying substantial phonetic similarity in favor of visual differences.

The general court pointed out some conceptual differences. The court noted that the preceding marks were associated with the concept of a black cat, while the marks under consideration lacked a distinct conceptual foundation in legal instances. It's established that if there is a conceptual difference, it can balance out other similarities, especially when one of the marks has a clear and specific meaning.

It is important to mention that the determination that the earlier figurative marks were associated with the concept of feline was made based on how they looked. In some EU languages like Finnish and Hungarian, the word “PANTHER” is translated as “PANTHERI” and “PARDUC”, respectively. This suggests that, from a pronunciation standpoint, the clear and specific meaning of “PANTHER” might not apply in these languages. This can give more weight to the high phonetic similarity, especially when combined with the fact that the goods are identical and the principle of interdependence.

Relative Importance of Different Meaning Versus Non-Distinctive Similarities in Trademarks

Language is a remarkable and complex system, and often it evolves in intriguing ways. A significant part of linguistic evolution involves the creation and alteration of words, meanings, and expression. In the vast tapestry of language, we encounter a fascinating dilemma: the balance between different meanings and similarities of non-distinctive elements. This conundrum frequently leads to discussions on semantics, pragmatic, and the fluid nature of language. Here we have to understand the importance of context which is pivotal in

understanding and interpreting language. It plays a crucial role in determining which meaning of a word or phrase is intended in a given situation. Consider the word “bank” which can mean a financial or institutions or the side of river.¹² The context in which it is used helps us to distinguish between the two meanings.

Polysemy and Homonymy

Polysemy and Homonymy are two linguistic phenomena that highlight the interplay between different meanings and non-distinctive elements. Polysemy refers to the existence of multiple related meanings for a single word. For instance, the word “light” can mean the opposite of heavy or the illumination in a room. In this case, shared elements (in this instance, the word “light”) allow for different meanings to coexist within a single word. On the other hand, homonymy involves unrelated words that happen to share the same form (spelling and pronunciations) but have different meanings. An example of this is the word “bark”, which can refer to the sound a dog makes or the outer covering of a tree. In such cases, the shared element might not outweigh the different meanings as they are often entirely distinct.

Semantic shift

Words can undergo semantic shifts over time, where their meanings change gradually. These shifts can lead to an evolution in language, creating novel and often divergent meanings. For instance, the word “gay” originally meant “happy” but now predominantly refers to homosexuality. In such cases, the different meanings sometimes outweigh the similarities of non-distinctive elements.

This case involves a dispute over trademark and General Court's determination of likelihood of confusion. Although the author disagrees with the GC decision, it concluded that the inclusion of non-distinctive element could potentially result in confusion between the trademarks.

The case involves “HYLO-VISION” and

¹² Neetu B. Shambharkar, “Notion of Deceptive Similarity under Trademark Law with Reference to Landmark cases in India: A Legal Insight”, *Indian Journal of Law Management & Humanities*, 457-463 (2020).

“HYDERVISION” trademarks, with the general court ultimately finding a likelihood of confusion. The GC’s decision is based on several factors, including the distinctive characters of the elements in the marks and the overall visual and rural similarity.

The inconsistency with previous CJEU case law argues that “HYLO” and “HYDRO” might not be inherently confusing but the addition of “VISION” changes the assessment. The emphasis on common non-distinctive element, suggests that it conflicts with established legal principles.

Understanding the concept of ‘Deceptive Similar’ vis-à-vis India

Prominent trademarks, such as Apple, MacDonald, Gucci, Coca-Cola and Nike or other iconic brands recognised worldwide are associated with specific words and logos. Trademark infringement arises when an unauthorised entity employs a mark that is identical or deceptively similar to a registered trademark in India. This constitutes a criminal offence governed by section 29¹³ of the Trademark Act of 1999, which outlines the legal measures to protect trademarks and curb infringement. Notably under section 103¹⁴ of the Trademark Act of 1999, trademark infringement is punishable by imprisonment for a minimum of one month to a maximum of three years, coupled with fine ranging from Rs 50,000 to Rs 200,000.

A recent case illustrating this legal framework involves Starbucks, a multinational coffee chain with substantial earnings, filing a trademark infringement lawsuit against an Indian company Sardarbuksh Coffee co., in the Delhi High Court, seeking interim relief. The Hon’ble High Court was entrusted with the responsibility of determining whether there existed a deceptive similarity between the Sardarbuksh Trademark and the original Starbucks, considering both pronunciation and visual aspects. Striking a balance, numerous legal precedents have set forth criteria for evaluating similarity, encompassing factors such as the likelihood of confusion, goodwill, and the general perception of consumers.

In the 1953 case of “*National Sewing Thread Corp*

*Ltd V. James Chadwick And Bros*¹⁵”, the Supreme Court held that assessing deceptive similarity, involves placing oneself in the position of an average, intelligent purchaser. If there is a likelihood that such a buyer would be confused when differentiating between two brands, those brands can be deemed deceptively similar.

In the 1996 case of “*M/s Lake Ltd. M/s Subhash Trading and others*”, the Plaintiff, known for selling cosmetic products under the Lakme Trademark, faced a defendant using the “LikeMe” trademark for similar products. The court found strong similarities in the words and phonetics, leading to the grant of an injunction due to the potential for deception and confusion in the buyer’s mind.

Sardarbuksh coffee company with a striking phonetic resemblance to Starbucks, found itself in legal trouble due to allegation of being deceptively similar. Originating as a small card business, it expanded to 25 outlets in Delhi, but was compelled to change its name to “SardarjiBuksh” following an interim order from the Delhi High Court and it clearly distinguishes it from Starbucks.¹⁶

The central issue at the heart of this controversy revolves around whether Sardarbuksh trademark is deceptively similar to Starbucks both in terms of pronunciation and visual elements, the concept of deceptively similar is rooted in section 2 (1)(18)¹⁷, add in conjunction with section 11¹⁸ of the trademarks act, 1999, the provision stipulates that if two trademarks are juxtaposed and one appears superior, certain consideration came into play, it create confusion or deception among observers they are considered deceptively similar and as a result cannot be registered.

While the Trademark Act does not provide fixed criteria for determining deceptive similarity, various statement from the Supreme Court and High Court offer guidance. This judgment established fundamental principles for assessing similarity in various contexts, such as visual and phonetic similarity, considering the rule of entirety, applying

¹⁵ *National sewing thread Corp Ltd versus James Chadwick and Bros*, 1953 AIR 357, 1953 SCR 1028

¹⁶ *Starbucks Coffee v. Sardarbuksh Coffee*, CS (COMM) 1007/2018

¹⁷ The Trademark Act, 1999 (Act 47 of 1999), s. 2(1) (18)

¹⁸ The Trademark Act, 1999 (Act 47 of 1999), s. 11

¹³ The Trademark Act, 1999 (Act 47 of 1999), s. 29

¹⁴ The Trademark Act, 1999 (Act 47 of 1999), s. 103

the likelihood of confusion test, and taking into account the concept of goodwill, notably in cases such as “*Polaroid corporation v. Polarad electronics Corp (1961)*”¹⁹ and *National sewing thread Corp Ltd v. James Chadwick and Bros, 1953*²⁰. The emphasis was placed on assessing deceptive similarity from the viewpoint of an average, intelligent purchaser. If the identification of two products leads to confusion during the purchasing process, they are considered deceptively similar.

A comparable case in the past involved, “Mr Singh Burger King”, a domestic entity and “Burger King” a global brand. The global brand took legal action against the domestic one setting for a take on wheels in the domestic entity had to change its name to “Mr Singh would Sing” as per the court order. In such cases, global brands with earlier registered trademarks are usually given preference. However, it is acknowledged that some domestic entrepreneurs intentionally register trademarks to gain rapid market attention.

Starbucks made its entry into the Indian market in 2012, whereas Sardarbuksh commenced operations in 2015, initially focusing on Delhi and rapidly expanding to over 20 outlets. The circular logo and writing style on Sardarbuksh’s branding closely resembled Starbucks, potentially causing confusion among ordinary consumers. Both Sardarbuksh and Starbucks offer products in similar categories, adding to the likelihood of consumer confusion and potential harm to Starbucks’ reputation. This confusion was exacerbated by older platforms like Zomato and UberEATS featuring both brands.

The court’s interim order favored Starbucks, directing changes to Sardarbuksh’s name for any future business activities. This underscores the difficulties in convincing the court that the use of a deceptively similar trademark would not adversely impact other companies in the market. Starbucks faced the risk of a global reputation loss due to what could be perceived as clever branding tactics by domestic companies, initially promoting their products and later altering their branding face amidst legal challenges.

METHODS AND CONSIDERATION FOR COMPARING TWO TRADEMARK’S

The rules governing the comparison of similarity between trademarks have been developed over time with a foundation in the influential Parker J. Case.²¹ When assessing the similarity between marks, several key considerations come into play. First the perspectives of an individual with average intelligence is taken into account, second the underlying concept or idea conveyed by both marks is considered, alongside their overall meaning visual or phonetic resemblance and their potential to generate confusion among the general public.²² Third when evaluating a product, it is essential to examine the trademark as a unified whole, rather than dissecting it into separate components. Lastly, it is not necessary to engage in an exhaustive, letter by letter comparison when assessing similarity between marks. These principles help guide the determination of trademark similarity in a comprehensive and practical manner.

When a court or tribunal is tasked with determining deceptive similarity key criteria are considered. These criteria encompass the nature of the marks in question whether they are in the form of words, labels, or composite marks. Furthermore, the extent to which the marks resemble each other, whether in how they sound, look, or the message they convey, is a significant factor. They also consider the type of product or service associated with the trademarks. They assess whether there is a resemblance in the nature and performance of the goods or services provided by various companies or service providers. Additionally, they take into account the demographic of buyers or users who are anticipated to acquire these products or utilize these services. This includes their level of education, intelligence, and the care they take when making purchasing decisions. Moreover, the mode of purchasing within the trading channel through which these goods or services are distributed or

19 *Polaroid Corporation v. Polarad electronics Corp* 287 F.2d 492

20 *Supra* 10

21 *Parker J in Re Pianotist co. (1906)* 23 RPC 774

22 Intepat, <https://www.intepat.com/blog/deceptively-similar-trademarks-examples-case-study/>, (last visited on October 23, 2023).



ordered is considered. Notably, the trademarks act lack specific requirement for defining deceptive similarity, leading Indian courts to rely on establish standards and guidelines derived from numerous cases to make determinations in this regard.

The Significance of Letter and Number in Trademarks

In section 2(1)(m) of the Trade Marks Act²³, the term “Mark” includes “letter” and “numeral” in its definition. A “trademark” is defined as a mark capable of distinction. This means that the law recognises that a trademark can be made up of letters and numbers, but there are exceptions. Single letter marks, in particular, need to be assessed for their distinctiveness based on the good or services they are associated with and how the public perceives them. Establishing distinctiveness for single letter marks may be more challenging compared to other word marks, and each case should be examined individually. Care must be taken to avoid registering descriptive single letter marks, such as “S” for clothing, as this indicates small size, special attention is required when dealing with technical items like motors, machines, and laptops, as certain letters may have a descriptive meaning in that context.

Registration may be refused if a single letter mark is found to be descriptive, customary in the trade or lacking distinctive character for the goods in question, unless there is evidence of acquired distinctiveness through use.²⁴ Two or more letters are generally easier to register, unless they indicate a characteristic of the goods or services (e.g., “XYZ” for guide books or “XL” for extra-large clothes) or lack distinctive character.

Marks that are simply abbreviations for specific goods or services are typically considered devoid of distinctive character. For example, “SDK” for “software development kit” lacks distinctiveness. However, non-abbreviated marks like “CVSP” for software can be registrable because they are not well-known abbreviation.

²³ The Trademark Act, 1999 (Act 47 of 1999), s. 2(1)(m)

²⁴ Sarthak Potdar, “All You Need to Know About Single Letter Trademarks.” *Acclaims*, available at: <http://www.penacclaims.com/wp-content/uploads/2020/06/Sarthak-Potdar.pdf> (last visited on October 19, 2023)

When a mark combines a descriptive word with a non-descriptive letter sequence, and the public perceives the letter sequence as an abbreviation of the word combination, the mark as a whole is considered devoid of distinctive character. Objection under section 11(1)(b)²⁵ and (c) of Trademark Act²⁶ would be raised against the registration of such marks. In other words, if a letter sequence is combined with a descriptive word without any significant variation, it results in a mark that lacks distinctive character and is seen as a combination of descriptive elements.

The assessment of distinctiveness is not influenced by factors like how goods or services may abbreviate in trade or if the initial letter from another word combination or have other meanings. Objections under section 11(1)(b) and (c)²⁷ would still be raised against the registration of such marks.²⁸

In the case of “*Chemetron Corporation vs. Morris Coupling & Clamp Co*”²⁹, the court recognised a slight similarity between the marks particularly the “TT” element. They stressed that assessing trademarks should focus on the potential for confusion in the minds of consumers, rather than just comparing marks side by side. This evaluation involves considering how the average purchaser remembers and perceives trademarks overtime.

CONCLUSION

In the context of assessing the deceptive similarity of trademark, the primary concern is whether there is a likelihood of consumer confusion or deception.

To determine this likelihood accurately, courts must try to replicate the condition under which potential buyers make their decisions. A court should not engage in an extensive and minute comparison of the conflicting marks, as this does not reflect the real-world context in which consumers encounter these marks. The assessment of confusion or

²⁵ The Trademark Act, 1999 (Act 47 of 1999), s. 11(b)

²⁶ The Trademark Act, 1999 (Act 47 of 1999), s. 11(1)(c)

²⁷ *Ibid*

²⁸ Sarthak Potdar, “All You Need to Know About Single Letter Trademarks.” *Acclaims*, available at: <http://www.penacclaims.com/wp-content/uploads/2020/06/Sarthak-Potdar.pdf> (last visited on October 19, 2023)

²⁹ *Chemetron Corporation vs. Morris Coupling & Clamp Co* 203 U.S.P.Q. 537

deception hinges on several factors, including the degree of similarity between the relevant marks, the similarity of the relevant goods or services, how to average consumer perceives the marks, and the distinctiveness of the earlier mark, which can arise from its inherent characteristics or its reputation through use.

After a comprehensive review of various cases studies, it becomes evident that the Supreme Court as a guardian of our rights has actively safeguarded both individual rights and the interest of business organisations integral to India's economic growth. The court has extended its interpretation of the law beyond its literal confines to ensure fair and just outcomes, particularly in cases of passing off that have historically lacked clear guidelines. Although there has been some advancement, practical challenges persist. Hence, it is imperative for the legislature to contemplate the implementation of mandatory trademark registration. This would confer exclusive and absolute rights upon the trademark owner, simultaneously safeguarding the interests of traders and streamlining court proceedings.

In assessing the likelihood of confusion or deception or the courts must consider the overall impression created by the visual, oral and conceptual elements of the marks considering their distinctive and dominant component. The perception of the average consumer in the relevant category of goods or services is pivotal, in determining the likelihood of confusion and deception. Consumers typically view a mark as a whole and do not dissect and compare on minor basis.

In conclusion, the Indian courts should adopt the factors for determining the likelihood of confusion as outlined by the Supreme Court of the United States. These factors include assessing the similarity or dissimilarity of marks in their entirety, the nature of the goods or services, trade channels, condition of sale, mark the presence of similar mark in the market, the nature of actual confusion, the duration of concurrent use without confusion and other relevant facts. This consideration should also guide legislative amendments in India to address

issues related to deceptive similarity in trademarks. Ultimately, the goal is to protect consumers who may not be experts and rely on appearances and general impressions when making purchases.

To assess trademarks that consist of letters, it is crucial to recognise that letters serve as both elements of language and tools for distinguishing products and services. In cases involving weak trademarks, making minor changes that don't impact the core of the mark may still constitute infringement. There are around 20,000 registered trademarks for the letter 's'. Yet each one is distinct from the others. However, if confusion arises due to the use of a similar single-letter-mark, it's unclear how the courts should handle such cases. The court's stance isn't definitive because each case must be decided based on its unique circumstances. There can't be a one-size-fits-all-rule governing trademarks laws.

The essence of a trademark lies in its ability to distinguish one product from another product. This distinct symbol then leads to prevention of Trademark infringement. Even if there are qualitative differences between the products and variation prices, this might not be sufficient to eliminate the risk of confusion, especially for less attentive consumers who might believe that the same entities is selling product at different prices due to differing quality levels.

It's crucial to acknowledge that trademarks may not always be directly compared side by side or chipped and compared. The primary test revolves around assessing the potential for confusion rather than focusing solely on individual elements. In simple words test is all about checking whether symbol creates confusion broadly in first look, rather than going into minute similarities of it. This evaluation involves considering the general memory of the average consumer, who typically retains a general impression of a trademark over time.