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

INTERIM APPLICATION (L) NO. 7958 OF 2024
IN
COMMERCIAL IP SUIT NO. 613 OF 2025

Atyati Technologies Private Limited ...Applicant

In the matter between :

Atyati Technologies Private Limited ...Plaintiff

Versus

Cognizant Technology Solutions U. S. Corporation and Another ...Defendant

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Mr. Ravi Kadam, Senior Advocate a/w Mr. Hiren Kamod i/b Mr. Abhishek Adke for Plaintiff/Applicant.

Mr. Virag Tulzapurkar, Senior Advocate a/w Mr. Rashmin Khandekar, V. Mohini, Ms. Aarti Agarwal, Mr. Karan Khiani, Mr. Rohan Lopes and Mr. Anand Mohan i/b Ms. Rashmi Singh and Mr. Karan Khiani for Defendant No. 1.

Mr. Venkatesh Dhond, Senior Advocate a/w Mr. Rashmin Khandekar, Ms. Aarti Agarwal, V. Mohini, Mr. Karan Khiani, Mr. Rohan Lopes, Mr. Anand Mohan i/b Ms. Rashmi Singh and Mr. Karan Khiani for Defendant No. 2.

Coram : Sharmila U. Deshmukh, J.
Reserved on : 28th April, 2026.
Pronounced on : 7th July, 2026.

ORDER :

1. The captioned Suit has been filed for infringement of copyright and trade mark in the Plaintiff's trade mark described in the plaint as

"ATYATI" device mark  and for passing-off. As the Defendant was granted registration of the impugned mark, the Plaintiff, for the purpose of interim application, has confined its relief only in respect of infringement of copyright in "ATYATI" device mark and for passing-off.

2. The Plaintiff's case is of incorporation of the year 2006 and providing services in the field of information technology. The house mark "ATYATI" which is also part of its corporate name, was conceived and adopted in the year 2008. The Plaintiff offers its services relating to Information Technology infrastructure, software development for banking and financial services and consulting services as well as stationery, e-books, material and allied products in relation thereto through its well-known mark "  /  .

3. As part of its re-branding exercise, in or about the beginning of the year 2019, the Plaintiff conceptualized, created and adopted a unique and distinctive logo/ device  to be used along with the Plaintiff's corporate name/mark "ATYATI", which is described in the plaint as "ATYATI" device mark. The plaint describes the "ATYATI" device mark as an orange-coloured, hexagonal honeycomb/hive device, which stands for collaboration, compassion and hence, represented in

'C' like shape and impact depicted by slightly inclined representation which is the motto of the Plaintiff's organization. The "ATYATI" device mark is created in house by the Plaintiff and qualifies as original, artistic work and ownership subsists in the Plaintiff.

4. The Plaintiff has secured trade mark registrations of  device mark in Classes 16, 35, 36, 38, 41 and 42 and the applications for registration of the independent "ATYATI" logo  are pending. The applications for the registrations of the registered composite device marks were inadvertently filed with user claim of the house mark "ATYATI" *per se* instead of "ATYATI" device mark for which the necessary steps have been taken by the Plaintiff. Similar is the case of the registration applications for the independent logo, which shows user claim of the year 2008.

5. The sales turnover in respect of the Plaintiff's services and mark "ATYATI" since inception and under the "ATYATI" registered marks after introducing the "ATYATI" device marks i.e. for the period from 2009 till 2023 is set out in paragraph 12 of the plaint. The sample promotional material in respect of Plaintiff's services and related products under the "ATYATI" registered mark and "ATYATI" device mark are appended to the plaint. The plaint lists the awards and

accolades bestowed upon the Plaintiff.

6. The plaint pleads that in or about October, 2023, the Plaintiff acquired knowledge about the Defendants offering identical services under the mark/logo  consisting of the mark/logo  as its prominent and leading feature. It is submitted that the impugned mark/logo is a substantial reproduction of "ATYATI" device mark and "ATYATI" registered mark and the overall look and feel, layout and placement of essential features including similar hexagonal honeycomb/hive device resembling the shape of the alphabet 'C' have been copied. The Plaintiff has filed rectification application seeking cancellation of registration of the impugned trade mark, which are pending adjudication.

7. A cease-and-desist notice was issued on 30th October, 2023 to the Defendants, which was responded on 7th December, 2023 refusing to comply with the requisitions of the notice raising various defenses without providing any justification for adoption of identical/deceptively similar mark. The Defendants are also advertising/offering impugned services under the impugned logo through its website www.cognizant.in which is accessible all over India including within the jurisdiction of this Court.

8. The suit was filed on 4th March, 2024 and by order of 19th March, 2024, *ex-parte* ad-interim relief was granted in terms of prayer clause (c) restraining the Defendant from infringing in any manner the Plaintiff's copyright in the artistic work comprised in "ATYATI" device mark. Vide order dated 13th June, 2024, the Learned Single Judge declined to continue the ad-interim relief. The Hon'ble Division Bench vide order dated 26th August, 2025 set aside the order of 13th June, 2024 resulting in restoring of ad-interim injunction. The matter was carried to the Hon'ble Apex Court which directed the order of 13th June, 2024 to continue till the application for temporary injunction is finally disposed of. Resultantly, as on the date of hearing of the interim application, there is no ad interim relief in favour of the Plaintiff.

9. In the limited Affidavit-in-reply dated 27th April, 2024, and the detailed reply Affidavit dated 5th September, 2025, the stand of Defendants is about suppression by Plaintiff about knowledge of the impugned logo which was readily available in public domain. It is contended that the Defendant No. 1, with the assistance of the expert designers independently designed the logo  in USA with no prior knowledge or existence of the Plaintiff. The logo  as adopted by the Defendants is a unique representation and rendition of alphabet 'C'

being directly associative and reminiscent of Defendant's name/mark "COGNIZANT". It is submitted that none of the designers or representatives of the Defendant No. 1 involved in independent creation of the Defendant's trade mark plus logo were aware of the Plaintiff's logo as the Plaintiff is not renowned. There is no actionable similarity under the trade mark law and copyright law and no case is made for passing-off.

10. The Defendants have obtained numerous registrations as well as filed applications internationally for the logo impugned in the subject suit i.e. cognizant across various jurisdictions and in addition has also obtained several registrations and filed many applications specifically for the logo *per se* across several jurisdictions. Insofar as India is concerned, the Plaintiff has secured the registration of an independent logo in classes 35-42 on 20th October, 2022. The Affidavit-in-reply further sets out design principles on which the logo is meant i.e. dimension, perspective and clarity which is representative of Defendant's brand identity.

11. Over the years, the Defendants have created varying representation of brands in keeping with their changing business from 1994 till the latest "COGNIZANT" mark with the device in 2022 with the

assistance of the renowned designers Nertil Muhaxhiri (Kosovo) and the late Orna Navon (New York) who is now deceased, who jointly and independently designed the  along with the internal marketing team of Cognizant. It is pleaded that Nertil and Orna worked collaboratively during the period 2021-2022 to conceptualize and design the impugned logo. Orna, who was the founder of One Design NYC LLC, was engaged by Wise Branding Group LLC, which is a consulting firm located in Florida, USA as a retainer in 2020 and 2021 on behalf of the Defendant No. 1 for conceptualization of impugned logo who had then engaged Nertil as a contractor to assist the conceptualization of logo. The Affidavit-in-reply, thereafter sets out some of the initial logos and final shape which were developed during the process along with rationale for its construction which evolved from a cube into something innovative, agile and intuitive. The Affidavit executed by the Nertil Muhaxhiri regarding creation of the impugned trade mark/logo is annexed to the affidavit in reply and it is stated that the Defendants have spent approximately Rs. 17 crores for the entire design process.

12. It is contended that the Plaintiff was aware of third party online article, which was last updated on 1st October, 2023, containing the explanation for adoption of Defendant's logo and particularly, with

reference to the fact that the logo was representative of letter 'C' and has attempted to pre-empt the Defendant's response by contending in the cease and desist notice that the Plaintiff's logo be construed as representative of letter 'C', without having any connection with letter 'C' or logo. It is submitted that objection has been raised by trade marks registry in connection with the Plaintiff's trade mark application filed for the logo independently to amend the trade mark name as per the image of device as the name for application is filed as device 'C' which the Registry has clearly stated does not match the image of the Plaintiff's logo.

13. The Plaintiff's mark is a composite logo 

whereas it asserts its claim for infringement by primarily relying upon the component thereof i.e.  which is neither distinctive of the Plaintiff by itself nor separately registered. The originality of Plaintiff's logo  is questioned as different variations to the hexagonal logo exist on the internet being used by third-parties and a Spanish Company Atresmedia Hub Factory is using an identical logo since 14th November, 2015.

14. There is no actionable similarity between the rival marks as the

impugned trade mark  is not identical or even deceptively similar to the Plaintiff's trade mark  . There is no cancellation proceedings against registration of the Defendant's trade mark of "COGNIZANT" along with the logo as well as the logo itself.

15. It is further submitted that the Plaintiff's logo has not acquired distinctiveness or has become synonymous with their business in the minds of the consumer and alleged use of the logo since 2019 is relatively recent, allegedly sporadic and allegedly unsubstantiated and therefore, no case of misrepresentation or deception is made out and there is no likelihood of harm and damage. The Plaintiffs are not entitled to grant of any equitable relief as delay in filing the trade mark application for logo *per se* was on 30th December, 2013 with wrong user date of 6th June, 2008 and a request to amend the user date was filed only before the institution of the present suit. The invoices as appended to the plaint reflect the trade mark  in a manner as if the same has been superimposed and the veracity is disputed.

16. The Affidavit-in-rejoinder dated 18th October, 2025 sets out the Plaintiff's explanation behind adopting the "ATYATI" Device mark

detailed in the Plaintiff's brand guidelines circulated internally in the year 2018. The Plaintiff has adequately furnished its reply to the trade mark registry's objection to describing the mark as "device of C". The alleged internet webpage of Atresmedia Hub Factory relied upon by the Defendants does not disclose any details about creation of the account nor any record of when the alleged logo page was uploaded. The Plaintiff's ATYATI device marks exhibit significant differences and variations in both idea and expression with the alleged logos/marks of third parties.

17. There is an additional affidavit dated 16th October, 2025 filed by the Defendants placing on record Defendant's website extracts, press releases, social media extracts reflecting the use of its logo.

18. Mr. Ravi Kadam, learned Senior Advocate appearing for the Plaintiff submits that at present, the prayer is limited to copyright infringement and passing-off and to the impugned logo and not the word mark "COGNIZANT". He has taken this Court through the pleadings setting out the history of adoption and registration of the "ATYATI" device mark in the year 2019 claiming ownership in the copyright subsisting in "ATYATI" mark. He points out registration secured of the mark "ATYATI" consisting of device mark and pending registration applications of independent "ATYATI" device. He would point out the annual reports of the Plaintiff depicting extensive

income/revenue figures generated to substantiate goodwill and reputation. He would further point out that the total revenue in respect of "ATYATI" trade mark/device mark for the year 2019-2020 to 2022-2023 is close to Rs.1,100 crores. He points out to the promotional material as well as the awards bestowed upon the Plaintiff.

19. He submits that in October, 2023 after acquiring knowledge about the impugned logo, a cease-and-desist notice was issued on 30th October, 2023. He submits that even though the Defendant's trade mark application showed user claim on proposed to be used basis and the impugned mark/logo was noticed by the Plaintiff in October, 2023, an internet search by erstwhile attorneys of the Plaintiff before issuance of notice indicates that the Defendants may have adopted the mark in March, 2022. He submits that there is no explanation or justification given by the Defendant in response to the cease-and-desist notice for adopting the impugned mark/logo. He would further point out that the comparison of the rival marks makes the similarity obvious. He submits that even accepting the Defendants are using the impugned mark/logo since March, 2022, there is no dispute to the fact that the Plaintiff is the prior adopter, user of the trade mark and "ATYATI" device.

20. He would submit that in support of the independent creation,

the Defendant has relied upon the designer's affidavit which mentions about being provided with conceptual brief which conceptual brief is conspicuously missing in the present proceedings. He submits that even if the designers themselves were unaware of Plaintiff's device marks, the reasonable likelihood of access cannot be ruled out given the participation of Defendant's own team's participation in the design process. He submits that none of the documents of the Defendants substantiate the purported design process and the documents do not establish that the designers independently conceived the first cut or final device without reference to prior work.

21. He submits that the copyright law recognizes the possibility of indirect copying including where a designer works on the basis of instructions or conceptual inputs supplied by the client and the absence of knowledge on the part of the designer, therefore, does not exclude the possibility that the design brief itself may have been derived from the Plaintiff's work.

22. He submits that the Defendant's designer's affidavit contains major inconsistencies as to when the impugned mark/logo was created as the affidavit of designer stated that the conceptualisation and development took place between the year 2021 to 2022, whereas the alleged time sheet produced by the Defendants pertains to the period 1st December, 2020 to 2nd January, 2021. He submits that the

documents relied upon by the Defendants relating to engagement of designer, the number of hours spent by them in the alleged creation and conceputalization of the impugned mark/logo, etc, contradicts the Defendant's own case set up of independent creation of impugned trade mark/logo. He has taken this Court through the Defendant's documents to contend that none of the documents relate to the impugned mark/logo and that the Master Services Agreement with Wise Branding and Agreement between Orna and Wise Branding as well as time entry details from Wise Branding records the time entries of Orna are in respect of other assignments and does not relate to the creation of the impugned mark. He submits that the research deck regarding the market survey conducted for four different logo iterations/designs and their public reception based on which the current logo was finally selected by end of March, 2021 is post the conceptualization stage and similarly, the agreement between the Cognizant and Orna is post conceptualization of the impugned mark/logo. He submits that the evolution of the new logo by the Cognizant's reposition deck is post the alleged date of conceptualization of logo including the Cognizant's final brand guidelines deck detailing visual identity, shape, color, gradient of the new logo. He would further point out that the agreement between the Wise Branding and Cognizant detailing brand usage guidelines for the

final logo does not mention the impugned mark/logo in the said Agreement.

23. He submits that as there is striking similarity between the two works, the Plaintiff is entitled to injunction. He submits that what is required is only a reasonable opportunity to view the Plaintiff's work and that Defendants had reasonable opportunity to access the Plaintiff's "ATYATI" device. He submits that the Defendant No. 2 is a principal subsidiary of Defendant No. 1 and is based in India. He submits that the Plaintiff and Defendant No. 1 both have offices in Bangalore and the Plaintiff is a reputed organization that has amassed revenue/income worth Rs 2000 crores since its inception and considering that both operate in same ecosystem, the Defendants were likely to be aware of the Plaintiff's existence.

24. He would further rely upon the passage from Copinger, 16th edition which recognizes that even where the Defendant employs an independent designer in an attempt to avoid infringement, the resulting work may still constitute infringement where the Defendant has given information which leads to reproduction of the earlier work. He submits that the designers were provided with conceptual directions, design references, and/or visual inputs that were themselves derived from the Plaintiff's "ATYATI" device mark, the resulting design may still constitute an indirect copy considering that

the impugned work bears the substantial similarity to the Plaintiff's work.

25. He would submit that the Plaintiff is the prior adopter of the Plaintiff's "ATYATI" device mark which has been created in-house by the employees of the Plaintiff and the copyright subsists in the Plaintiff. He submits that the Defendant's use of the impugned mark/logo containing the logo  as its leading and essential feature is a reproduction of the Plaintiff's artistic work and such copying amounts to infringement. He submits that minor variations in angle or coloring are inconsequential and the correct test to determine is whether the average viewer after having seen both the logos is clearly of the opinion or gets the unmistakable impression that the subsequent work is a copy of the original work.

26. He submits that impugned mark/logo has not been originated from a hexagonal source and the Defendant's pleading is that the impugned mark/logo was derived from a cube as opposed to the hexagon. He submits that therefore, the stance of similarity in idea is inconsistent and contrary to the material on record. He submits that as it is the Defendant's own case that they wished to create a logo which depicted the letter 'C', there are several means and modes of depicting the letter 'C', and there is no explanation as to why the

Defendants used the same hexagonal shape as one being used by the Plaintiff. He submits that the Plaintiff's claim is not directed at the mere use of a geometric concept but stylised depiction of the logo by means of hexagonal shape. He submits that the burden is upon the Defendant to explain as to how such similarity arose without copying which has not been offered by the Defendant.

27. He submits that the principle of doctrine of merger being an exception to copyright protection is not applicable in the present case as the same applies only in the case where there are no meaningful alternative ways to express an idea. He submits that the Plaintiff's brand guidelines circulated internally within the Plaintiff's association in or about 2018 makes a clear mention of Plaintiff's rationale behind adoption of the "ATYATI" device mark being collaboration, compassion and impact which signifies the importance of letter 'C' while creating the "ATYATI" logo.

28. He submits that the Defendants have sought to contend that the Plaintiff copied the "ATYATI" device from the alleged prior Spanish logo without placing any credible material on record.

29. He submits that the Plaintiff has acquired and demonstrated the goodwill and reputation in "ATYATI" device mark which was used since 2019 and is much prior to the Defendant's registration/application/use of the impugned mark and points out to revenue figures for the year

2019-2020 to 2022-2023, which is close to 1100 crores. He submits that it cannot be accepted that the presence of Plaintiff's logo becomes redundant as the Plaintiff's logo is always used with the word mark "ATYATI". He submits that the Defendants are effectively misappropriating half of the Plaintiff's registered composite mark, where both the elements of the "ATYATI" mark are distinctive, memorable and capable of independent recall. He submits that for the purpose of assessing similarity and likelihood of confusion, it is Defendant's standalone use of the impugned mark/logo which should be relevant consideration rather than the question whether or not the Plaintiff's use is in standalone manner. He submits that the use by the Defendant of the standalone mark is likely to evoke an association with the Plaintiff in the minds of the consumer familiar with the Plaintiff's device mark. He submits that the Defendant's own document reflects the significance of the logo as indicated from the market survey.

30. He submits that it is not necessary to show actual instances of deception or confusion but mere likelihood to grant relief. He submits that the similarity between the rival marks/logos in question including its visual and similarity are apparent and the rival marks are registered under the identical classes under NICE classification. He submits that the field of activity has broad and reasonable co-relation, which has given rise to clear likelihood of confusion. He submits that customer

seeking to avail the impugned services is likely to believe that the same are associated with the Plaintiff's services under the "ATYATI" registered mark including the "ATYATI" device mark. He submits that fraud is not a necessary element and the absence of an intention to deceive is not defense though proof of fraudulent intention may materially assist the plaintiff in establishing probability of deception.

31. He submits that the case of reverse passing-off arises where a powerful junior user overwhelms the market presence of a smaller senior user, causing the public to believe that senior user's business originates or is associated with the junior's business. He submits that given the Defendant's overwhelming market presence and global recognition, the consumer may assume that the Plaintiff is connected with or affiliated to the Defendant's business/misrepresentation falls within the law of passing-off. He submits that the Defendant's contention that the educated consumers negate confusion has been rejected by the Courts repeatedly and though sophisticated consumers may exercise greater care in purchasing decisions, the same does not eliminate the possibility of confusion where the marks themselves bear the substantial similarity which is the position in the present case. He submits that it is well-settled that passing-off is capable of encompassing varied forms of misrepresentation including the situation where the Defendant's misrepresents another's goods as its

own and greater test remains whether there is misrepresentation resulting in damage to reputation which squarely covers the case of reverse passing-off.

32. He submits that the defense of suppression is mere non-disclosure of documents which are not material to the outcome and since the hearing is after completion of pleadings and detailed Affidavits, the Court has all relevant material before it including the defense taken. He further submits that the Hon'ble Apex Court in its order dated 8th September, 2025 has categorically directed the application to be decided on its own merit without being influenced by the success of the Appeals.

33. He submits that the balance of convenience is in favor of the Plaintiff as the Defendants are admittedly subsequent adopters and users of the impugned mark. He submits that there would not be irreparable hardship as the Defendant has already changed the logo twice, once immediately after the *ex-parte* ad-interim order dated 19th March, 2024, and second after continuation of injunction order passed by Division Bench of this Court which shows that the Defendants are not dependent on the use of the impugned mark/logo for carrying on its business activities. In support, he relies upon the following decisions:

Crocodile International Pte. Ltd. vs. La Chimise

Lacoste and Another[1]

Western Digital Technologies Inc. vs. Geonix International Private Limited through its directors[2]

Cognizant Technology Solutions U.S. Corporation and Another vs. Ayati Technologies Pvt. Ltd.[3]

Laxmikant V. Patel vs. Chetanbhai Shah[4]

Wockhardt Ltd. vs. Torrent Pharmaceuticals Ltd[5]

Ramdev Food Products (P) Ltd. vs. Arvindbhai R. Patel[6]

Gujarat Bottling Company Ltd. vs. Coca Cola Company[7]

Big O Tire Dealers, Inc. vs. The Goodyear Tire and Rubber Co.[8]

Ameritech, Inc. vs. American Information Technologies Corporation[9]

Dreamwerks Production Group INC vs. SKG Studio[10]

Sheila Mahendra Thakkar and Others vs. Mahesh Naranji Thakkar[11]

34. Mr. Virag Tulzapurkar, learned Senior Advocate appearing for the Defendant No 1 submits that Defendant No 1 was incorporated in the

1 Judgment dated 9.3.2026 passed in RFA (OS) 18/2024 and CM Appl.5613/2024 passed by Delhi High Court.

2 Judgment passed by Delhi High Court dated 9.3.0226 in FAO (OS) (COMM) 146/2024, CM APPL. 38898/2024 and CM APPL. 39900/2024.

3 Order dated 8.9.2025 in Petition (s) for Special Leave to Appeal © No. (S) 25582-25583/2025.

4 (2002) 2 SCC 65.

5 (2018) 18 SCC 346.

6 (2006) 8 S.C.C. 726.

7 (1995) 4451 (Bom)

8 408 F. Supp. 1219 (1976)

9 811 Federal Reporter, 2nd Series.

10 142 F-3d 1127 (9th Cir. 1998).

11 2003 SCC OnLine Bom 441.

year 1996 and in India its existence is from the year 2008. He submits that the Defendants have been conducting their business under the house mark "COGNIZANT" along with originally conceived and independently created logos containing either "COGNIZANT" and/or the initial letter "C". He points out the varying representations used by the Defendants since its inception and submits that the name and the alphabet "C" have been fundamental to the Defendant's branding. He submits that over a course of three decades, the Defendants have built up a formidable reputation and goodwill evidenced from its revenue figures placed on record. He submits that the Cognizant C-logo and the Cognizant composite logo and the word "COGNIZANT" are both registered in India and their use dates back to 2022, admittedly to the knowledge of the Plaintiff and points out to the Defendant's US trade mark application as well as the press release on the Defendant's website online.

35. He submits that the Defendant's trade mark application in USA for the impugned logo reflects the first commercial user date of 21st March, 2022, which user is also reflected in print media as well as on the internet. He submits that mere resemblance of logo by itself is per se not determinative of copyright infringement and therefore the possibility of access is emphasized by Mr. Kadam. He submits that

similarity as well as access is required to be shown.

36. He submits that the impugned logo is an independent creation by the Defendants with the assistance of two internationally renowned designers. To substantiate the aspect of independent creations, he points out the Master Services Agreement of the year 2018 entered into between the Cognizant and Wise Branding, the agreement of 6th November, 2020, between Wise Branding and Orna regarding design services for Cognizant, the time entry details showing total 995 hours spent by Orna in designing of logo between December, 2020 to January, 2021, the supplemental branding proposal deck tendered in response to the Court's query, the material regarding the market survey conducted in March, 2021, the agreements detailing brand usage guidelines and the final brand guidelines of the year 2024. He submits that the creative discourse was conducted largely orally and the written record is not exhaustive of the creative exchange. He submits that the sequence of events duly supported by documents establishes an intensive, iterative and thoroughly documented creative process between December, 2020 and April, 2021 involving hundred of hours of work resulting in creating the Cognizant logo. He points out the initial images developed during the process and emerging of the final product. He submits that the Defendant's "C" logo has evolved from a cube without any reference to the Plaintiff's logo. He submits

that the entire design process entailed estimated project costs of USD 2,000 approximately INR 17 crores. He would negate the claim for copyright infringement as the impugned logo is an independent creation.

37. He submits that the Plaintiff's copyright case rests on the inference of access, which presumption is negated by presenting evidence of independent creation. He submits that the Plaintiff has no global presence, no international reputation and no mechanism by which there can be possibility of the mark being viewed by the designers working in the United States in the year 2020-2021. He submits that here is no direct or indirect causal connection between the copyright work and the alleged infringing work. He cites Copinger and Skones James and Nimmer on Copyright in context of causal connection and bare possibility of viewing to brush aside the claim of copyright infringement.

38. He submits that mere existence of the logo in the public domain does not create a presumption of access and if such yardstick is applied, the Plaintiff cannot claim copyright in its own work on account of an identical and/or deceptively similar prior work i.e. the Spanish logo. He would point out wayback machine records placed along with the Defendant's reply in order to demonstrate the prior use of the logo by spanish company. He would submit that the Defendant's

designer had no greater exposure to the Plaintiff's logo as the Plaintiff had to the spanish logo. He submits that the Plaintiff in rejoinder has categorically admitted that the Plaintiff's mark and spanish logo are significantly different and such admission is fatal to the Plaintiff's case. He would submit that the spanish logo would also vitiate the Plaintiff's case of originality.

39. He submits that dishonest attempt has been made by the Plaintiff to portray its mark as being 'C' device when the letter 'C' has no nexus to the Plaintiff's brand and only upon being aware that the conception of 'C' is an essential feature of the Defendant's "COGNIZANT" mark.

40. He submits that the Plaintiff has manufactured its case on single central fiction that its logo depicts the letter 'C' solely to create the appearance of similarity with the Defendant's "Cognizant-C" logo, a claim formally rejected by the trade marks registry. He submits that the rival marks are not actionably similar by pointing out the colour contrast, the dis-similarities in gradient, orientation of shape and the ultimate overall impression created by the rival marks. He submits that when the same idea is developed in a different manner, similarities are bound to occur and independent creations flowing from the same abstract are not copyright infringement.

41. He submits that there is no standalone goodwill in the Plaintiff's

logo device and there is no question of misrepresentation by the Defendants and no likelihood of confusion or damage, considering the stature and independent goodwill of the Defendants and also the high-value sophisticated nature of software services which are not ordinary consumer products. He points out that the Plaintiff refers to its logo device as "ATYATI" device mark expressly conceding the primacy of the word "ATYATI" as source identifier over the logo *per se*. He submits that the Plaintiff's registration for the stand alone logo was filed after the Defendant's reply to the cease and desist notice to construct a right that did not previously exist.

42. He submits that for confusion to exist, the Plaintiff must be shown to be popularly known by the logo device and there is no *prima facie* material to establish the same. He would point out the difference in the nature, scale, pricing and consumers of the Plaintiff's and Defendant's business to contend that there are no overlapping markets by any measure whatsoever.

43. Insofar as reverse passing-off is concerned, Dr. Tulzapurkar would submit that there is no foundational pleading and even this formulation would require fulfillment of traditional trinity of passing-off. He submits that the Defendant's consolidated global revenue for the year ending 31st December, 2024 was approximately INR 1,65,000 crores and they are global leaders in relation to their business. He

submits that the Plaintiff's simultaneous invocation of strong and protectable goodwill and a reverse passing-off on the premise that such goodwill would be eclipsed by a junior user's use of an allegedly similar logo, is mutually destructive.

44. He submits that the marks have to be viewed as a whole and it is not permissible to dissect the marks. He submits that the Plaintiff is using its composite mark and Defendant is using its composite mark as well as standalone logo and there is no question of confusion as there is no similarity or resemblance between the two marks.

45. He submits that the third limb of passing-off trinity test i.e. likelihood and damage is contingent on the prior establishment of misrepresentation and goodwill which has not been established in the present case. In support, he relies upon the following decisions:

Ramrameshwari Devi and Others vs. Nirmala Devi[12]

Morgan Stanley Mutual Fund vs. Kartick Das[13]

Kewal Ashokbhai Vasoya vs. Suarabhakti Goods Pvt. Ltd.[14]

Modi Entertainment Network vs. W.S.G. Cricket PTE. Ltd.[15]

PrepLadder Private Limited vs. Medical Joyworks, LLC[16]

12 (2011) 8 SCC 249.
13 (1994) 4 SCC 225.
14 2022 SCC OnLine Bom 3335.
15 (2003) 4 SCC 341.
16 Appeal from Order No. 281 of 2021, decided on 24th September, 2021.

46. Mr. Dhond, Learned Senior Advocate appearing for Defendant No 2 submits that the present suit is not a *bona fide* action and the Plaintiff's cause of action is concocted and manufactured one. He submits that cease-and-desist notice forming part of the plaint expressly records that the Defendant adopted the impugned mark in 2022 and plaint filed six months later nonetheless describes the adoption as very recent in October, 2023. He submits that the Plaintiff has suppressed from this Court its own knowledge of the Defendant's adoption since 2022 which is evidenced from the Defendant's public-facing online material, the existence of prior art hexagonal mark and the true scale and stature of the Defendant's mark. He submits that the fabrication of 'C' logo narrative by the Plaintiff is a centrepiece of the present case. He submits that having read the Defendant's design rationale, the Plaintiff proceeded to appropriate that very rationale for its own logo, retroactively claiming its logo to represent letter 'C' which has been rightly objected by the Trade Marks Registry. He would further submit that there is fabrication of the Plaintiff's own evidence of use as the invoices show that the logo was superimposed over pre-existing documents. He submits that the annual report extract does not show the logo which in every other document appears at top-right corner which would give clear evidence of fabrication. In support, he relies upon the following decisions :

Raj Video Vision etc. vs. K. Mohanakrishnan[17]

Ronald G. Calhoun vs. Lillenas Publishing[18]

Charles Watt vs. Dennis Butler[19]

Davies vs. Wolverhampton Wanderers Football Club (1986) Ltd.[20]

Lacoste vs. Crocodile International Pte. Ltd.[21]

R. G. Anand vs. M/s. Delux Films[22]

Hulm Entertainment Pvt. Ltd. vs. Fantasy Sports Myfabil Pvt. Ltd.[23]

Shella Mahendra Thakkar vs. Mahesh N. Thakkar[24]

Eastern Book Company vs. D. B. Modak[25]

Mansoob Haider vs. Yashraj Films Pvt. Ltd.[26]
Indian Express and Commercial Ventures and Projects Pvt. Ltd. vs. Fundamental Hospitality Pvt. Ltd.[27]

Mangalam Organics Ltd. vs. N. Ranga Rao and Sons Pvt. Ltd.[28]

Gensol Electric Vehicles Pvt. Ltd. vs. Mahindra Last Mile Mobility Ltd.[29]

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17 1998-2-L.W.718.
18 MANU/FEEE/0159/2002.
19 MANU/FEEE/0653/2012.
20 Manu/UKCH/0105/2019.
21 2024 SCC OnLine Del 5591.
22 (1978) 4 SCC 118.
23 2023 SCC OnLine Del 6591.
24 2003 SCC OnLine Bom 441.
25 (2008) 1 SCC 1.
26 2014 SCC OnLine Bom 652.
27 Order dated 19th December, 2025 passed in IA(L) No. 35432 of 2025.
28 2025 SCC OnLine Bom 3017.
29 2025 SCC OnLine Del 68.

47. In rejoinder, Mr. Kadam would submit that the extract from Nimmer on Copyright highlights that even in an uncontradicted testimony of the writer of the Defendant's work and that he had never in fact viewed the Plaintiff's work may be rejected, in light of the opportunity to view creating an inference of access, which in turn creates an inference of copying. He submits that the test is probability of access. He points out the content of the Defendant's website that Cognizant employs nearly 350,000 people globally and 70% of whom are in India, that they have large presence in India, that the employees are based in various cities including Bangalore, where the Plaintiff is based, that the substantial majority of personnel on the Defendant's teams is comprised of Indian nationals. He would submit that the proof of access is visible as their employees, who are Indians, could have conveyed the Plaintiff's logo. He submits that there is deliberate omission of design brief given by the Defendants to their designers.

48. He submits that the prior adopter is not required to show origin and in any event points from the logo concept that the Plaintiff's logo was always called as "C" device. He submits that the alleged branding proposal submitted across the bar cannot be accepted and even if looked into indicates that the impugned logo evolved from 3D cube and not a hexagon as it sought to be contended.

49. He submits that the argument on existence of spanish logo in

the year 2015 is an argument of desperation and there is no connection of this logo with India. He submits that the wayback machine screenshot cannot be considered as authentic.

50. He submits that the Defendant's argument of no independent use of device is unacceptable as the logo becomes source identifier. He submits that the Defendant's independent usage of their logo will create confusion and be associated with the Plaintiff and the Plaintiff can lose distinctiveness of mark as both are in the same class.

51. Rival contentions now fall for determination:

52. The facts of the case and the submissions canvassed would require determination on the following broad issues:

> (i) Whether the Plaintiff owns copyright in the "ATYATI" logo?
>
> (ii) Whether the impugned mark/logo is similar/identical to the Plaintiff's "ATYATI" mark/logo?
>
> (iii) Whether the inference of copying can be founded only on chronological priority and public availability?
>
> (iv) Whether there was a bare possibility of access as opposed to reasonable opportunity of access to the Plaintiff's "ATYATI" logo?
>
> (v) Whether there is material on record for *prima facie* finding of the independent creation of the Defendant's logo ?
>
> (vi) Whether the Defendant's use of the impugned logo constitutes an act of passing-off by applying

the doctrine of reverse passing-off?

(vii) Whether the Plaintiff's conduct disentitles it from the equitable relief of injunction?

53. The rival marks are reproduced hereinbelow for the purpose of comparison :

Plaintiff's mark	Defendant's mark
	

54. Mr. Kadam has confined his relief only to infringement of copyright and passing-off as in the interregnum, the Defendants had secured registration of its mark. The plaint refers to its logo  as "ATYATI" device mark and the impugned mark is the Defendant's logo  . The contest is essentially between the two logos.

55. Under the statutory provisions of the Copyright Act, 1957, the copyright in the work vests in the author of the work and confers exclusive right including right to reproduce and distribute the work. The Plaintiff's adoption and user of the "ATYATI" device mark since the

year 2019 is not in dispute. The Defendants have sought to bring the Plaintiff's copyright in the "ATYATI" logo under a cloud by claiming that the Plaintiff's creation is not a original creation but a reproduction of prior spanish logo conceptualized by Atresmedia Hub factory in the year 2015, which finds existence in the Linkedin Page and the website of the spanish company. Mr. Kadam would doubt the authenticity of the screenshots from wayback machine, which this Court is informed is sort of internet archive, which allows the users to view the past versions of websites or webpages as they appeared at that specific point of time. The Defendants plead in paragraph 7(e) that google search for the logo revealed results wherein different variations of the hexagonal logo can be found on several websites and links being used by third parties and also being offered for sale as logo by other artists/websites.

56. It is not merely the existence of a similar logo somewhere in some part of the world but the copying of the logo which would obstruct the Plaintiff's claim to monopoly over the use of the "ATYATI" logo on originality. At the highest, the screenshots would show chronological priority and acceptance of this yardstick alone runs contrary to the Defendant's arguments based on test of reasonable possibility of access. There is no pleading or material to substantiate that the Plaintiff had reasonable opportunity of viewing the spanish

logo and I am not inclined, based only on the screenshots of the webpages extracted from the internet archives to accept that the "ATYATI" logo is a reproduction of the spanish logo. *Prima facie*, the Plaintiff has established that it is the owner of the copyright in the "ATYATI" logo.

57. The Defendants would claim that Cognizant logo is starkly different from the "ATYATI" logo by reason of the colour contrast between the two logos which is visually determinative and that the Cognisant logo is horizontally oriented, animated and directly evokes the letter "C", whereas the Plaintiff's logo is orange, flat vertically oriented and upward pointing.

58. The Hon'ble Apex Court in the case of ***R.G. Anand vs. M/s. Deluxe Films and Others*** (supra) and others, summarized the law relating to copyright as under :

> "The relevant law relating to copyright may be stated as follows:-
>
> (1) There can be no copyright in an idea, principle, subject-matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.
>
> (2) Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the

> defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.
>
> (3) The surest and safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.
>
> (4) Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.
>
> (5) Where, however, apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.
>
> (6) As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case-law.
>
> (7) Where however the question is of the violation of the copyright of stage play by a film producer or a director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader prospective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved."

59. The essence of copyright ownership in the form, manner, arrangement and expression of idea by the author and not in the idea

itself, is captured in the decision of the Hon'ble Apex Court. To gauge the substantial similarity, the lay observer test is to be applied as to whether the viewer after seeing both the work is of opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original. The comparison of the rival logos shows resembling hexagonal honeycomb device shape with colour contrast and whereas the "ATYATI" logo is inclined upwards, the Cognizant logo is positioned horizontally. Copinger and Stone James in their seventeenth edition on Copyright has set out in paragraph 7-104 as under:

> **"7-104"** Proof of copying: …..In a case where the court is asked to infer copying by reason of the similarities between the works, the first step should be to identify those features of the defendant's work which it is alleged to have been copied from the copyright work. The court should then undertake a visual comparison of the two works, noting the similarities and the differences. The purpose of this examination is to judge whether the particular similarities relied on are sufficiently close, numerous or extensive to be more likely the result of copying than coincidence, not to see whether the overall appearance of the two designs is similar. Similarities which are commonplace, unoriginal, the result of common subject matter or external constraints, such as dimensions to which both works are subject or consist of general ideas can usually be disregarded at this stage because they are not probative of copying. This is not a hard and fast rule, however, because an overall impression of sufficient similarity, leading to an inference of copying can arise from a combination of elements which by themselves are not original. **If the claimant demonstrates sufficient similarity, not in the woks as a whole but in the features which he alleges have been copied and establishes that the defendant had prior access to the copyright work, it will then be for the defendant to satisfy the judge that , despite the similarities, they did not result from copying.** Although this inquiry is directed to the similarities rather than the differences, the

> differences may nevertheless be important because they may indicate an independent source and so rebut any inference of copying. But differences in the overall appearance of the two works due to presence of features of the defendant's work about which no complaint is made are not material.
>
> Direct evidence of copying is rarely available and reliance frequently has to be placed on inference drawn from circumstantial evidence. **The basis of secondary proof of copying normally lies in the establishment of similarities between the claimant's work and the defendant's work, combined with proof of the possibility of access by the author of the defendant's work to the claimant's work. Inferences may properly be drawn from the surrounding circumstances and from the nature of the similarities themselves…..The existence of a striking general similarity coupled with evidence of the opportunity to copy will establish a *prima facie* case of copying which the defendant then has to answer. The evidential burden shifts to the Defendant who may then seek to adduce evidence of some alternative explanation for the similarities between the two works for example evidence of independent creation or common source…"**
>
> (emphasis supplied)

60. The Plaintiff's claim is not based on copying of any particular feature of the "ATYATI" logo as there is no combination of elements but a single element being the hexagonal shaped device. Both logos are similar hexagonal shaped device with colour contrast and different positioning. The Plaintiff's rejoinder seeking to distance itself from the spanish logo is an attempt of desperation and even if militates against the Plaintiff's case of similarity between "ATYATI" logo and Cognizant logo, *prima facie*, in my view, upon comparison of the rival logos there is no denying that there is resemblance between the "ATYATI" logo and and Cognizant logo by adoption of the single element hexagonal shaped logo. However, the aspect of mere resemblance has to cross

over to the arena of actionable infringement for injunction to follow.

61. The Plaintiff's logo is claimed to be representation of its motto and value i.e. Compassion and Collaboration represented by the stylised depiction of the letter "C" in hexagonal shape and impact depicted by a slight upward tilt of the logo to show growth. The conceptual brief underlying the Defendant's logo is claimed to centre around the aspect of designing a 3D shape to represent the Cognizant brand, creation of an angular shape to evoke the technical and engineering sensibility, horizontal orientation of the shape to create sense of forward motion which is reminiscent of the alphabet "C" associated with the corporate name of Cognizant.

62. Mr. Kadam would submit that there is no similarity in idea as the Defendant's logo evolved from a cube and not a hexagon as that of the Plaintiff's logo. The cube is the expression and not the idea. The underlying concept is the depiction of alphabet "C", which is fundamental to Defendant's branding and Plaintiff's motto of "Collaboration" and "Compassion" represented by the letter "C". The alphabet "C" can be expressed in various forms but when adopted in a geometric hexagonal form, replacing the curved alphabet with angular lines would be expressed similarly. The basic underlying concept of the rival marks, if expressed in simple language, is creation of an geometrically structured pattern evolving from the alphabet "C" and

creating a visual impression of growth and depicting teamwork and collaboration. As the underlying concept is similar, the creation is bound to have similar reflections. The Defendants would challenge the underlying concept of Plaintiff's logo being represented in "C" like shape in order to support its contention of stark dissimilarity between the rival logos. The plaint pleads that its device stands for collaboration and compassion and hence is represented by the alphabet "C". To support its re-branding exercise carried out in the year 2018, in the rejoinder affidavit, the Plaintiff has produced the brand presentation email of 18th October, 2018, which indicates that the design evolvement encompassed the idea of collaboration, compassion and impact.

63. In ***Crocodile International Pte Ltd vs. La Chimise Lacoste*** (supra), the Delhi High Court was concerned with the issue of infringement of copyright of saurian device mark. Noting the essence of copyright protection, it observed that copyright law is rooted in the principles that "no man is entitled to steal or appropriate the result of another man's brain, skill and labour." Copyright does not protect ideas, but rather their expression, however not every expression of an idea is protected. It held in paragraph 17.13 and 17.19 and 17.20 as under:

> **"17.13:** One exception to copyright protection is the

> doctrine of merger. This doctrine holds that if an idea and its expression are so intrinsically connected that the expression becomes indistinguishable from the idea, the expression is not entitled to copyright protection to avoid monopolizing general ideas.
>
> **17.19** ….It is pertinent to note that the said doctrine should only be applied in cases where there are no meaningful alternative ways to express an idea. If alternative expression exists, the doctrine of merger should not apply.
>
> **17.20…..**This suggests that the defendants had reasonable access to and knowledge of Lacoste's mark. While the doctrine of merger does not dependent on intent, in situations where access and near identity are present, courts should be hesitant to apply the doctrine of merger, especially where the work is used in trade and strongly associated with a particular brand".

64. The Court's conclusion rested on the findings of access to the claimant's mark and absence of material to demonstrate independent creation. The doctrine of merger can be negatived by placing material to show absence of access and proof of independent creation. A striking similarity may allow inference of copying and to defeat the inference, it must be shown that the impugned work is result of independent creation as it is open to adopt, develop and give expression to an idea in an independent manner. There is *bona fide* explanation for adoption of the impugned logo resembling the alphabet 'C' in a geometric form for association with Cognizant. The Plaintiff's infringement notice dated 30th October, 2023 reproduces

the changes made to the Cognizant logo. The remodeling of Cognizant logos will indicate a pattern of using a logo which depicts the letter "C" and the present logo *prima facie* appears to be a gradual transition to the geometric representation of the letter "C".

65. To demonstrate independent creation of the logo, the Defendants have placed on record the documents which are summarised in its written submissions as under:

Year/Date	**Description**	**Page No. of the Documents filed with the Detailed Affidavit-in-Reply**
April, 2018	Master Services Agreement (MSA) between Cognizant and Wise Branding (*continuous engagement for provision of services*) [*mentioned in the agreement with Wise Branding*].	1952
November 6, 2020	Agreement between Ms. Orna Navon and Wise Branding to retain Ms. Orna Navon regarding design services for Cognizant.	1938-1939
December 1, 2020 to April 23, 2021	Time Entry Details from Wise Branding records stating that hundreds of hours were spent towards the independent development of the logo which included the designing of the logo itself, upon selection formulating its usage and branding guidelines, etc. for the Defendants.	1953-1956

January 2021	The Supplemental Branding Proposal deck tendered during oral arguments in response to the Ld. Single Judge's query on the iterative process reflecting back and forth on different logos including the current C-logo.	[*Tendered a physical copy on March 6, 2026 during oral arguments*]
March 2021	Cognizant Visual ID research deck regarding the market survey conducted across United States, United Kingdom, Germany, and Australia for four different logo iterations/designs and their public reception based on which the current logo was finally selected by end of March 2021.	2034-2061
April 14, 2021	Agreement between Cognizant and Ms. Orna Navon (through her own agency, One Design) detailing brand usage guidelines for the final logo post logo development stage.	1957-1967
April 29, 2021	Agreement between Wise Branding and Cognizant detailing brand usage guidelines for the final logo. [*This was a project specific agreement in extension of the general MSA of 2018 already in place*].	1940-1952
2022	Cognizant's Reposition deck detailing how the new logo evolved and embodies their brand values.	2062-2072
2024	Cognizant's final brand	

	guidelines deck detailing visual identity, shape, colour, gradient of the new logo.	1968-2033

66. The Master Services Agreement between the Cognizant and Wise Branding of April, 2018 is stated to be a contract for providing wide ranging branding and related services not limited to a transactional engagement. Wisebranding on 6th November, 2020 executed an agreement with one Orna Navon to provide consulting and design services for the period from 1st January, 2021 to 31st December, 2021. Under the said agreement, Orna agreed to provide services on assignments to be determined by Wisebranding on an as needed basis. These documents *prima facie* demonstrates the engagement of Wise Branding by Cognizant and subsequent engagement of Orna as service provider.

67. There is a document styled as "Cognizant Visual ID Research" report of March, 2021 placed on record. The object of the report is stated to identify the most effective brand ID for Cognizant by gauging reactions, associations and potential impacts of each colour palette and ID direction and the survey was carried out across United States, United Kingdom, Germany and Australia. The report states that between 17th February, 2021 and 11th March, 2021 the survey was

conducted amongst Senior IT executives or executive reporting managers etc. It records that what was shown was multiple system elements from each potential direction including the logo, website etc. The report sets out the proposed four logo iterations identified as "Gradient", "Compass", "Jumble" and "Code" and that "Gradient" element depicts the current Cognizant logo, which indicates that the creative process had resulted in four distinct logos which was put in market survey during the period of February, 2021 and March, 2021. It concludes that the "Gradient" is the clear and obvious choice for the future of Cognizant brand and that the icon mimics a "C", piques their interest and is easily recognisable. The report may be post conceptualization but established that creative process commenced much earlier.

68. On 14th April, 2021, there was a specific brief from Cognizant to Orna, which is post March, 2021 report that selected the "Gradient" element and entrusted Orna with the task to deliver the new Cognizant visual identity and deliverables. The agreement makes specific reference that Orna will refine the selected visual identity concept, establish the final brand element and create the first phase of the visual identity guidelines. By email of 29th April, 2021, a detailed document was went guiding the scope of work, designing process and concept and the deliverables and timelines, which was project specific.

The work was to commence from 1st May, 2021 and conclude on 15th July, 2021. The time entry details is produced for the period 1st December, 2020 to 30th April, 2021. The Defendants have thus offered voluminous persuasive documents to show independent creation.

69. The Plaintiff would dispute that the documents evidence independent creation as it is the Defendant's own case that the initial conceptualization and development of logo options began in December, 2020. The detailed conceptualization and development of the impugned logo may not be documented, however, the evolution of four distinct logos in March, 2021 would *prima facie* negate the contention that the conceptual brief was designed on the Atyati logo. The voluminous material produced on record *prima facie* indicates that the design process commenced in December, 2020, with the gradual refinement of the design favoured in the market survey and demonstrates extensive process of independent creation of the Cognizant logo. It is unfathomable that the Defendants would post conceptualization go through the extensive process of refinement of the brand identity by carrying out survey, identifying the logo and document the same, while it intended to merely copy the Atyati logo.

70. It is the act of copying which is actionable and not a resemblance between the copyrighted work and the impugned mark. Copinger and Skones James on Copyright, Volume One, 16th Edition, 2011 states :

"**7-14: Causal connection** - …Where the claimant's and the defendant's works are similar, there are **four possible explanations**: the defendant's work was copied from the claimant's; the claimant's from the defendant's; both from a common source; or mere chance or coincidence**. It is only in the first case that an infringement of the claimant's work can have occurred**. Although the concept of copying is expressed differently in relation to the different categories of work, the underlying principle is that **there can be no infringement unless use has been made, directly or indirectly, of the copyright work. Copyright is not a monopoly right and no infringement occurs by an act of independent creation**. This is often expressed as saying **there must be a causal connection** between the copyright work and infringing work. This is one of the ways in which copyright differs from true monopoly rights such as patents and registered designs.

Nimmer on Copyright, Indian Reprint 2010, Volume 4, Lexis Nexis (part of extract relied on by Plaintiff) @ Page 13-21 states:

"Of course, reasonable opportunity, as here used, does not encompass any bare possibility in the sense that anything is possible. Access may not be inferred through mere speculation or conjecture. **There must be a reasonable possibility of viewing plaintiff's work - not a bare possibility**."

b. Copinger and Skone James on Copyright, Volume 1, Sweet & Maxwell, 17th Edition, March 2016 (part of extract relied on by Plaintiff) Para 7-105, Page 601; Para 23-392, Page 15791 states:

'7-105: Inexact reproduction: imitation and substantial part - …It is wrong to decide the question by asking whether the defendant's work looks like the claimant's. An action for infringement of copyright is not concerned with appearance of the defendant's work but with its derivation. **The basis of the complaint is not that the**

> **defendant's work resembles the copyright work but that the defendant has copied all or substantial part of it**… A visual comparison of the two designs is therefore not only unnecessary, but likely to mislead.
>
> **21-392: Whether copying has occurred or not is a matter of fact –** ...The existence of a striking general similarity coupled with **evidence of the opportunity to copy** will establish a *prima facie* case of copying which the defendant then has to answer. The evidential burden shifts to the defendant who may then seek to adduce evidence of some alternative explanation for the similarities between the two works, for example, **evidence of independent creation or common source… The task of the judge is to consider the evidence as a whole and decide whether there has been copying or not**."

71. The designing agency of the Defendant was located in U.S. and the Defendant No. 1's representative was based in U.S. who was providing the conceptualization brief and inputs. Access means reasonable opportunity to view the copyrighted work. It is settled that there need not be direct evidence of copying and indirect evidence can be presented to show that the Defendants had reasonable opportunity of viewing the Plaintiff's work. The pleading in the plaint essentially concentrate on the trademark infringement. In so far as copyright infringement is concerned, the case is premised on the resemblance of the two logos *sans* the necessary chain of circumstances to demonstrate reasonable opportunity of viewing the "ATYATI" logo. In ***Ronald Calhoun vs Lillenas Publishing*** (supra), the Court of Appeals

have held that proof of access and substantial similarity raises only a presumption of copying which may be rebutted with evidence of independent creation. Once evidence of independent creation is offered, the burden is upon the claimant to prove that copying occurred.

72. The Plaintiff comes to the Court with no inkling that the Defendant had a reasonable opportunity to view the Plaintiff's work and the proof of access is picked out from the documents produced by the Defendants such as the annual reports, website screenshots etc showing presence of Defendant No. 2 in India, the major part of the employees being Indian nationals, longest running operations in India and the Defendant's representative providing the conceptual brief to the designers. The magnitude of the Defendant's corporate existence suggests the segregation of every department and it is not possible to accept that merely because the employee force comprises Indian nationals, the Defendant's concerned personnel involved in the rebranding process in United States had the opportunity of viewing the Plaintiff's work. The time distance between the adoption of the Plaintiff's logo in the year 2019, and the process of creation of the Cognisant logo is relatively short to demonstrate a reasonable opportunity of viewing the copyrighted work. As the possibility of direct distinct proof of opportunity of viewing being remote, indirect

proof can be considered on the basis of the circumstances/material which has been placed on record. The chain of circumstances must demonstrate exposure, availability and opportunity of access. As discussed above, there is no pleading much less any document to lead to an inference that the Defendants had reasonable opportunity of viewing the Atyati logo. The prior adoption and public availability of the Atyati logo, if held, sufficient to lead to an inference of copying without showing the reasonable possibility of viewing the Plaintiff's work, the existence of identical hexagonal device created by Spanish Company Atresmedia Hub Factory in the year 2015 would defeat the Plaintiff's claim of originality. The Defendants having *prima facie* established independent creation of logo and the absence of material to infer reasonable opportunity to access the Plaintiff's logo, the claim for copyright infringement to restrain the Defendant's use of its logo at interim stage must fail.

PASSING-OFF :

73. Being aware of comparative statures in the common field of activity i.e. software development, Mr. Kadam has put forth the doctrine of reverse passing-off. The traditional tort of passing-off occurs when the Defendant sells his products as Plaintiff's products. The reverse passing-off is pitched as variant of traditional tort of passing-off and the contention of Mr. Kadam is that the Defendant

who is the junior user with his financial abilities and market standing would swamp the market and would eclipse the Plaintiff who is comparatively smaller in the relevant market causing damage. The tort of reverse passing off results in damage to the senior user by loss of value of its trademark and its product identity.

74. Section 27(2) of the Trade Marks Act, 1999, provides that nothing in the Trade Marks Act shall affect rights of action against any person for passing-off goods and services as the goods of another person or as services provided by another person, or the remedies in respect thereof. Passing off is not codified and the test remains the same of goodwill, misrepresentation and damage. The provision is capable of encompassing wide range of misrepresentation of origin. The Delhi High Court in the case of ***Western Digital Technologies Inc. vs. Geonix International Pvt. Ltd.*** (supra) has taken a view that the concept of reverse passing-off is foreign to trade mark jurisprudence and does not clothe the party with enforceable cause of action. The observations of Delhi High Court are rendered in the factual scenario of refurbished goods. In my view, with utmost respect, the Delhi High Court has considered the direction of misrepresentation to be a determinant factor whereas the statutory provision of Section 27(2) does not circumscribe the direction of misrepresentation and uses the expression “any person” for passing-off goods and services as the

goods and services of another person which would take within its fold even a case of reverse passing-off where there is likelihood of Plaintiff's goods being represented by the Defendants as its own. In my view, it is nature and effect of misrepresentation which is material and not the direction of misrepresentation whether forward or reverse which would affect the action of passing-off. The statutory provision would also include a scenario where the goods originate from Plaintiff but are likely to be misrepresented as originating from the Defendant. A case of reverse passing-off occurs in such an event.

75. In the case of ***Sheila Mahendra Thakkar and Others vs. Mahesh Naranji Thakkar*** (supra), this Court has observed that reverse passing-off or inverse passing off is not a distinct nominate tort but a further example of actionable misrepresentation to which normal principles of passing off would apply. In view of the decision taken by this Court, the decision in the case of ***Western Digital Technologies Inc. vs. Geonix International Pvt. Ltd.*** (supra) which takes a contrary view cannot be accepted.

76. The decisions cited by Mr. Kadam on the applicable tests for passing off cannot be disputed. It is the application to the facts of each case which would result in differing consequences. In view of the decision in case of ***Sheila Mahendra Thakkar and Others vs. Mahesh Naranji Thakkar*** (supra), the test of goodwill and reputation,

misrepresentation and damage are applicable tests even in the case of reverse passing-off. The Plaintiff alleges copyright infringement in respect of the logo of "ATYATI". In the plaint, the Plaintiff has not pleaded about reverse passing-off and even if arguments are to be considered, what is required for the Plaintiff to establish is protectable goodwill which by use of similar logo would cause damage to such goodwill. As Plaintiff claims passing-off in respect of its standalone logo *de hors* the wordmark "ATYATI", the Plaintiff has to demonstrate that the logo by itself when viewed by the customers would be associated only with the Plaintiff and no one else. There is no material and there is no submission which has been canvassed to support such a finding. Pertinently, it needs to be borne in mind that the logo has been conceptualized in the year 2019 which is of recent origin. The documents which have been filed by the Plaintiff does not demonstrate the use of the standalone logo and the logo is always used with the mark "ATYATI". It is not pointed out to this Court that there is any goodwill and reputation in standalone logo which is at interim stage, *prima facie* made out from the sales turnover. The sales turnover which is brought on record is in respect of composite mark i.e. logo with housemark "ATYATI" and not the standalone mark. The Plaintiff and the Defendants have locked horns over the essential feature of "ATYATI" device mark which comprises logo as well as house

mark “ATYATI”. According to the Plaintiff, it is the logo which is the source identifier whereas according to the Defendants, it is the word “ATYATI” which is the source identifier. In the plaint, the plaintiff has annexed the application made before the Trade Marks Registry on 20th January, 2019 for registration of device mark of “ATYATI” i.e. word as well as logo in which the Plaintiff has identified the trade mark as “ATYATI”. For the purpose of being a source identifier, it is trite that the consumers should associate the logo with the Plaintiff such as in the case of “NIKE” whereas the swoosh sign would result in the consumers immediately associating the sign with Nike. For forming that kind of association in the minds of the public, there can be either longstanding use or relatively short use, however, there must be material to demonstrate immediate association with the Plaintiff by the relevant consumer base. The “ATYATI” mark was adopted by the Plaintiff in the year 2008, whereas the logo was conceptualised and adopted much later in the year 2019. It is difficult to accept that it is not the “ATYATI” mark by reason of its long standing adoption and use, which is the source identifier but the logo of recent origin. In my view, it is the word “ATYATI” which is leading and essential feature of the Plaintiff’s mark. There is no goodwill and reputation demonstrated by the Plaintiff in respect of the stand alone logo. Though it is settled that there has to be cumulative satisfaction of the trinity, even accepting

that there is goodwill attached to "ATYATI" logo, what is required to be demonstrated is misrepresentation. The Hon'ble Apex Court in the case of ***Cadila Health Care Limited vs. Cadila Pharmaceuticals Limited***[30] has laid down the parameters to be applied in the action for passing-off in paragraph 35 as under :

> **"35.** Broadly stated, in an action for passing-off on the basis of unregistered trade mark generally for deciding the question of deceptive similarity the following factors are to be considered:
>
> (a) The nature of the marks i.e. whether the marks are word marks or label marks or composite marks i.e. both words and label works.
>
> (b) The degree of resembleness between the marks, phonetically similar and hence similar in idea.
>
> (c) The nature of the goods in respect of which they are used as trade marks.
>
> (d) The similarity in the nature, character and performance of the goods of the rival traders.
>
> (e) The class of purchasers who are likely to buy the goods bearing the marks they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and/or using the goods.
>
> (f) The mode of purchasing the goods or placing orders for the goods.
>
> (g) Any other surrounding circumstances which may be relevant in the extent of dissimilarity between the competing marks."

77. Applying the principles laid down by Hon'ble Apex Court, the

30 Order dated 19.12.2025 passed in IA(L) No. 35432 of 2025.

distinction which has been tabulated by the Defendants in their written submissions is reproduced hereinbelow :

Parameter	Atyati	Cognizant
Core Business	Fintech company: last-mile financial inclusion technology and BC services for rural/semi-urban India. (***Para 6, Page 19 of the Plaint)***	Global IT services and consulting: digital transformation, AI, cloud, ERP for large enterprises worldwide. NASDAQ-100, Fortune 500. ***(Para 7.1(a), Page 1021 of the Detailed Affidavit-in-Reply)***
Specific Services	Financial Inclusion Gateway Stack, Loan Origination/Management Systems, Corporate Business Correspondent services. (***Para 6, Page 20 of the Plaint***)	Enterprise IT consulting, cloud migration, application development, AI, cybersecurity, data analytics.
Customer Segment	Public sector banks, Regional rural banks, small finance banks, and ultimately rural individuals as end-beneficiaries of financial inclusion programmes. ***(Page 198, Plaint)***	Fortune 500 corporations, global MNCs, large institutional clients with dedicated IT procurement functions. ***(Para 7.1(c), Page 1023 of the Detailed Affidavit-in-Reply)***
Decision-Maker	IT departments of	Chief information

	Indian public sector/rural banks; government-regulated procurement processes.	officers/Chief technology officers of multinationals; enterprise procurement committees; highly sophisticated buyers with extensive due diligence processes.
Geography & Scale	India-specific; rural/remote focus; niche regulatory space.	270+ offices, 100+ delivery centres globally; 336,800+ employees; USD 19+ billion revenue; Sophisticated global partners: Adobe, Amazon, Google, Microsoft, SAP, Oracle. ***(Para 7.1(d), Page 1024 of the Detailed Affidavit-in-Reply)***

78. Even if belonging to the information technology service space, there is distinct separation of nature and scale of services which are being offered and the class of customers who avail these services. The Plaintiff's customer segments includes public sector banks, regional rural banks whereas the Defendant's customers are Fortune 500 corporations including global MNCs. It is not an ordinary nature of services which are availed but a specialized class which would require a deliberative decision before such services are availed. The services are

rendered mainly to institutional clients who are discerning and there would not be any confusion that the Plaintiff's services are that of the Defendant. The decision-makers at the helm would be well informed and technically literate and there is no likelihood of any confusion being caused and no question of confusion between the Plaintiff's services and the Defendant's services.

79. In the case of ***Gensol Electric Vehicles Private Limited vs. Mahindra Last Mile Mobility Limited***[31], it was held as under :

> **"26.** It is settled position of law that likelihood of confusion would have to be determined in every case based on the facts and circumstances obtaining in the case, including the nature of goods and the kinds of customers. (See: ***Pianotist Co.' Application, Re, (1906) 23 RPC 774***). In Kerly's Law of Trade Marks and Trade Names, Sixteenth Edition, paragraph 20-188, pages 839-840, it has been stated that goods which are either expensive or important to the purchaser are not purchased without deliberations. The relevant extract is reproduced below:
>
> > "**Common experience shows that consumers' attention will vary depending on the kind of goods they are buying. Not all classes of consumers will exercise the same level of care in choosing products. Many older cases have considered this general issue, including cases going back to times when many consumers were illiterate (likely to be relevant now only in relation to goods for export or goods aimed at children). The general principles are as follow: (1) It must not be assumed that a very careful or intelligent examination of the mark will be made. (2) But, on the other hand, it can hardly be significant that unusually stupid people, "fools or idiots", or a "moron in a hurry" may be deceived.**

31 2025 SCC OnLine Bom 3017.

(3) If the goods are expensive or important to the purchasers and not of a kind usually selected without deliberation, and the customers generally educated persons, these are all matters to be considered. (4) If some parts of the mark are common, one must consider whether people who know the distinguishing characteristics of the opponents' mark would be deceived."

(emphasis supplied)

31. The rationale of the aforesaid judgments would be even more applicable in the present case. Both the plaintiff and the defendant are engaged in the business of selling motor vehicles, which are high end products. Unlike Fast-Moving Consumer Goods (FMCG) products, motor vehicles are not purchased at supermarkets, departmental stores or online e-commerce platforms. A customer intending to purchase a motor vehicle **would not make the decision on an impulse. It would be an informed and well-thought-out decision**. In the normal course, the customer would visit or approach the showroom of the car manufacturer or its authorized dealer in order to inspect the car and/or test drive the vehicle before making the decision to purchase. **Additionally, in current times, prospective purchasers have ample resources at their fingertips, including the ability to perform internet searches to verify the authenticity, features and credibility of products they are buying.**

33. While purchasing a motor vehicle, the name of the manufacturer becomes very important and an average consumer while deciding to purchase a motor vehicle would not only consider the model of the motor vehicle but also its manufacturer. **There is an amount of brand equity, goodwill and reputation attached to the name of the manufacturer**. It is a known position in the automobile industry that a model of a car is identified and recognized not only by the name of

> the model but also by the name of the manufacturer… Thus, the **name of the manufacturer is of utmost importance for a consumer and becomes a distinguishing factor as the consumer would consider the manufacturer's name** and not just the car model."

80. The contention of damage by reason of the senior user swamping the market and by reason thereof the likelihood of damage of Plaintiff is dependent on the Plaintiff, firstly, establishing the goodwill in its independent logo and secondly, misrepresentation by the Defendant intended or unintended. The Plaintiff has not satisfied the ingredients of the tort of passing-off, forward or reverse. In Kerly's Law of Trade Marks and Trade Names, 16th edition, the learned Author has laid down the general principles of passing-off as under :-

> **"(i)** It must not be assumed that very careful or intelligent examination of the mark will be made.
>
> **(ii)** But on the other hand, it can hardly be significant that unusually stupid people, fools or idiots, or a moron in a hurry may be deceived.
>
> **(iii)** If the goods are expensive or important to purchasers and not of a kind usually selected without deliberation and the customers generally educated persons, these are all matters to be considered.
>
> **(iv)** If some parts of the mark are common, one must consider whether people who know the distinguishing characteristics of the opponents' mark would be deceived."

81. In the case of ***Khoday Distilleries Limited vs. Scotch Whisky***

Association and Others[32], the Hon'ble Apex Court addressed the question that expression by Indian manufacturer for whisky amounted to passing-off of the rights associated with term 'scotch'. The Hon'ble Apex Court held in paragraph no. 75, 76 and 77 as under :

> **"75.** The tests which are, therefore, required to be applied in each case would be different. Each word must be taken separately. They should be judged by their look and by their sound and must consider the goods to which they are to be applied. Nature and kind of customers who would likely to buy goods must also be considered. Surrounding circumstances play an important factor. What would be likely to happen if each of those trade marks is used in a normal way as a trade mark of the goods of the respective owners of the marks would also be a relevant factor. (See ***Pianotist Co.—s Application, Re [(1906) 23 RPC 774]*** .)
>
> **76.** Thus, when and how a person would likely to be confused is a very relevant consideration.
>
> **77.** Where the class of buyers, as noticed hereinbefore, is quite educated and rich, the test to be applied is different from the one where the product would be purchased by the villagers, illiterate and poor. Ordinarily, again they, like tobacco, would purchase alcoholic beverages by their brand name. When, however, the product is to be purchased both by villagers and town people, the test of a prudent man would necessarily be applied. It may be true that the tests which are to be applied in a country like India may be different from the tests either in a country of England, the United States of America or Australia."

82. Even accepting the formulation of doctrine of reverse confusion by McCarthy in its treatise on Trademarks and Unfair Competition cited by Mr. Kadam, in case of reverse confusion, customers purchase the senior user's goods under the mistaken impression that they are getting the goods of junior user. The junior user saturates the market

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the overwhelms the senior user. Reverse confusion will be likely to occur when a person who knows of the well known junior user first comes in contract with the lesser known senior user and because of similarity of marks, mistakenly thinks that the senior user is the same as or is affiliated or connected with the junior user. The learned author has observed that in reverse confusion case, it makes more sense to evaluate whether persons familiar with junior user's stronger mark, and who encounter the senior user's weaker and less well known mark, associate it with the junior user's mark. In my view, the foundation is the mistaken perception of the end users, when encountering the lesser known mark, to associate the same with the junior user's mark. While applying the test as formulated to the facts of the present case, in view of the nature of services offered by the junior user and senior user and the customers being discerning, well informed and the decision of availing the services being a deliberated decision, it cannot be accepted that based on resemblance of the marks, there would be a mistaken association with the junior user's mark.

83. In my view, there is no *prima facie* case of passing-off/reverse passing off made out by the Plaintiff.

84. In light of the discussion above, the Defendants have *prima facie* discharged the burden of establishing independent creation of the Cognisant logo and the case of copyright infringement thus fails. The

Plaintiff has failed to establish the traditional tests of passing off and even if the tests of reverse passing off as formulated by McCarthy when applied, *prima facie* there can be no mistaken association of the Plaintiff's "ATYATI" Device marks with the Defendant's "COGNIZANT" device mark.

85. The Interim Application fails and stands dismissed.

[Sharmila U. Deshmukh, J.]