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

% *Date of Decision: 13th July, 2026*

\+ CS(COMM) 778/2024

HAVELLS INDIA LIMITED & ANR. .....Plaintiffs

Through: Mr. J. Sai Deepak, Senior Advocate with Mr. Sudeep Chatterjee, Mr. Kunal Vats, Mr. Sanyam Suri, Mr. Shitanshu Abhishek and Ms. Purnima Vashishta, Advocates.

versus

HAVAI HOME PRODUCTS PVT. LTD. & ORS. .....Defendants

Through: Mr. Arnab Ghosh and Mr. S.P. Singh, Advocates for D-1 and 2.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

I.A. 38970/2024

1. This application is preferred by the Plaintiffs under Order XXXIX Rules 1 and 2 CPC seeking ad interim injunction restraining Defendants and all others acting on their behalf from using the impugned trademarks HAVAI, , and/or any other mark deceptively similar to Plaintiffs' trademarks HAVELLS/ and and/or their derivative forms. Before proceeding further, be it

noted that originally Plaintiffs had impleaded three Defendants, wherein Defendant No.3 was Bureau of Indian Standards. However, vide order dated 24.12.2025, Defendant No.3 was deleted from the array of parties.

2. To the extent necessary, the factual matrix as brought forth by the Plaintiffs is that Plaintiff No.1 is an Indian company and both Plaintiffs are owners and proprietors of HAVELLS trademark for different goods and HAVELLS also forms part of the corporate name of Plaintiff No.1, which is a company incorporated in 1983 *albeit* it has been in the Electrical and Power Distribution Equipment business since 1942 through its predecessors. Plaintiff No.1 is a two billion Dollar leading FMEG company having extensive production and distribution network across India and internationally, providing wide range of world class industrial and electrical products. Plaintiff No.1's products are widely sold under some of the most prestigious global brands like Havells, Reo, Crabtree etc., and its state-of-the-art manufacturing plants in India are located in a number of places such as Haridwar, Noida, Alwar. Plaintiffs have a strong domestic presence across 45 cities employing more than 6,500 professionals and have pioneered the concept of exclusive brand showrooms in the electrical industry with Havells Galaxy Stores. Plaintiffs have also launched mobile van activity and over 380 exclusive stores with mobile applications to shop online through e-stores and is one of the first FMEG companies to offer door step service via its initiative 'Havells Connect'. Plaintiffs' products are of superior quality and are certified by both national and international quality certification bodies such as Bureau of Indian Standards, Bureau of Energy Efficiency, KEMA KEUR DEKRA (Netherlands) Metrology, CB, CE, EDD (Bahrain), ESMA (Emirates Authority for Standardization and Metrology), GSO (GCC Standardization

Organization), SONCAP (Nigeria), Bureau Veritas, TÜV Rheinland and UL.

3. It is stated that Plaintiffs' products are sold in India and also exported to more than 60 foreign countries such as Sri Lanka, Dubai, Egypt, Maldives etc. Plaintiffs have earned immense reputation and goodwill by sale of vast array of goods bearing trademark HAVELLS and its formatives including device marks with artistic works such as , . Plaintiffs have invested substantially in promotion and advertisement of the products through print and electronic media, advertisements in magazines, articles as also through social media platforms. The sales figures as also expenses incurred on promotion from 2016-2017 to 2023-2024 are as follows:-

Year	Sales Figures in INR (In crore)
2016-2017	5,169.28
2017-2018	8260.27
2018-2019	10,068.72
2019-2020	9,429.20
2020-2021	10427.92
2021-2022	13888.53
2022-2023	16,868.38
2023-2024	18,549.90

Year	Advertising, Promotional & Marketing Expenditure in INR (In crore)
2016-2017	190.60
2017-2018	307.58
2018-2019	384.28
2019-2020	320.94
2020-2021	132.55
2021-2022	246.82
2022-2023	437.40
2023-2024	527.36

4. It is stated that trademark HAVELLS is an invented/coined word and the mark along with its device marks , have been used extensively and continuously since their adoption. Plaintiffs' earliest registration for device mark under registration no. 167484 in Class 11 dates back to 1955 and details of the registrations are as follows:-

S. No.	Registration No.	Trademark	Class
1.	167484		11
2.	1558787		7
3.	4678498		7
4.	4678499		7
5.	4678500		8
6.	4678502		8
7.	1762389	HAVELLS LOGO	7, 9, 11, 42
8.	2338944	HAVELLS	37
9.	2338943	HAVELLS	35

10.	1558789	HAVELLS	11
11.	1558788	HAVELLS	9
12.	4678501	HAVELLS	9
13.	4678504	HAVELLS	9
14.	4678505	HAVELLS	11
15.	4678503	HAVELLS	11
16.	1748477		9
17.	1750276		99

5. It is stated that Plaintiffs also enjoy registrations in foreign jurisdictions and many applications for registration of variant marks, are pending. HAVELLS is an integral part of several domain names owned by the Plaintiffs. Plaintiffs have been extremely vigilant in protecting their intellectual property rights in the HAVELLS trademarks and have filed law suits and other proceedings, both internationally and in India, against third

parties attempting to infringe the marks and/or pass off their goods and many favourable orders of injunction have been granted by various Courts, as detailed in paragraph 33 of the plaint. Significantly, the trademark HAVELLS, owing to its widespread, continuous, extensive and uninterrupted use and immense reputation and goodwill has been recognised and declared as a well-known mark within the meaning of Section 2(1)(zg) of the Trade Marks Act, 1999 ('1999 Act') by judgment dated 08.12.2024 passed by this Court in CS(OS) 3770/2014 titled *Havells India Ltd & Anr. v. M/s TT Plyboard & Ors.* and the trademark is included in the list of well-known trademarks by the Trade Marks Registry.

6. It is stated that Defendant No.1 is a company engaged in the business of manufacturing and selling various electrical products including air coolers, pedestrian fans, immersion rods etc. and is additionally selling spare parts such as cooler covers for various companies as also the Plaintiffs, but without authorization of the Plaintiffs and are unlawfully using the mark HAVELLS SPARES on the spare parts. As per search conducted by the Plaintiffs, trademark HAVAI is registered in favour of Defendant No.1 in Class 11; mark havai in Class 20; mark HAVAI in Classes 21 and 24. The applications were filed on 'proposed to be used' basis. Defendant No.1 also filed application dated 23.08.2023 bearing no. 6079038 for registration of mark havai on 'proposed to be used' basis in Class 07, in which Plaintiff No.1 filed opposition. Plaintiff No.1 has also filed opposition in another application filed by Defendant No.1 on 23.08.2023 for registration under no. 6079054 in Class 35, where no counter statement has been filed and the application stands abandoned. Defendant No.2 is the proprietor of the firm Advance Coolers, which is marketing the products of Defendant No.1. Defendants are selling the impugned products under the mark HAVAI

through the official website https://www.havai.com/ as also through third party websites such as Amazon.

7. It is stated that in second week of December, 2023, Plaintiffs learnt that initial trademark application no. 2578982 was filed by Defendant No.2 and the trademark was later assigned in favour of Defendant No.1 vide Assignment Deed dated 24.06.2023. Defendant No.2 has also filed an application on 'proposed to be used' basis bearing no. 5733513 dated 22.12.2022 for registration of mark HAVAI under Class 11 but objection has been raised by the Trade Marks Registry. Defendant No.2 had also earlier filed application bearing no. 2578981 dated 12.08.2013 for registration of mark HAVAI in Class 08 but the same also stands abandoned vide order dated 19.07.2024 since counter statement to the opposition filed by Plaintiff No.1 was not filed. It is thus clear that both Defendants are mischievously resorting to securing illegal registrations to defeat the proprietary rights of the Plaintiffs.

8. In order to understand the exact business model of the Defendants, Plaintiffs purchased one of the products of Defendant No.1 through Amazon and found that not only were the Defendants using the mark 'HAVAI', which is deceptively similar to Plaintiffs' HAVELLS marks but were also mentioning incorrect ISI numbers on the products to mislead the authorities that they were following the mandatory protocols under the Bureau of Indian Standards Act, 2016 ('BIS Act'). Further investigation revealed that Defendants have also adopted two device marks HAVAI and HAVAI, which are deceptively similar to Plaintiffs' HAVELLS marks

and have gone to the extent of copying the colour scheme, overall get up and layout to cause confusion amongst members of public, which constrained the Plaintiffs to approach this Court.

9. Learned Senior Counsel for the Plaintiff argued that Defendants are selling their products under the impugned mark 'HAVAI' along with its formative device marks through their official website https://www.havai.in/ and in order to maximize their reach and unlawfully enrich themselves, Defendants are also selling impugned products on Amazon, Flipkart, IndiaMart etc. On an overall comparison of the impugned marks HAVAI/ HAVAI/HAVAI with Plaintiffs' registered marks HAVELLS/HAVELLS and their formative marks, it is apparent that the rival marks are visually and phonetically, deceptively similar and the goods being identical and trade channels and consumer base being common, there is every likelihood of confusion amongst members of the public. Defendants are thus infringing the registered HAVELLS trademarks of the Plaintiffs under Section 29 of 1999 Act. There is no gainsaying that armed with registrations, Plaintiffs have a statutory right to the exclusive use of the HAVELLS marks as also to restrain third-parties from infringing them.

10. It was strenuously urged that this is a peculiar case, where Defendant No. 1 is not using the actual mark HAVAI in which it has registration in class 11 and the products are being sold in the market using the mark HAVAI, with a different font style of last letter 'I' in an explicit attempt to have a close resemblance with Plaintiffs' registered HAVELLS marks. Deliberate use of a different font style is to give an impression that the letter 'I' is an

'L' so as to deceive an unwary customer to perceive the phonetics of the mark as 'Ha-va-L', in which case there will be a complete phonetic identity between the rival marks and the goods of the Defendants will be easily passed off as those of the Plaintiffs, owing to their immense goodwill and reputation. In fact, in one such instance in the past, a party was successful in duping the consumers by spoofing a domain name 'Nilesh.Bhatia@havelIs.com', wherein the alphabet 'i' was changed to 'I' to look like 'L'. It is pertinent that the class of consumers purchasing the products in question i.e., cooler covers, immersion rods, pedestal fans, air coolers etc. and other electrical goods include *inter alia* electricians, electrical contractors, builders and general public for their households, who may not necessarily be discerning customers and due to high degree of phonetic similarity between the rival marks when HAVAI is read as HAVELLS, since the latter is so well known and identity of goods, a man of average intelligence and imperfect recollection will be confused on the initial look that the goods of the Defendants are those of the Plaintiffs or have some association with it.

11. It was argued that the likelihood of confusion between the rival marks HAVELLS and HAVAI gets enhanced in the present case as the marks are also structurally and visually deceptively similar. Both marks begin with the alphabet 'H' and the first syllable 'HAV' is common. The consumers belong to tier II and tier III cities of the country, where consumers generally do not focus on each alphabet critically but go by the overall visual impression of the mark. It is for this reason that this Court vide order dated 27.05.2025 passed in CS(COMM) No. 519/2025 in *Havells India Limited & Anr. v. Jai Bhagwan Sharma & Ors.* restrained the Defendants from using the mark 'HAVEIIS' and on showing of the Plaintiffs that Defendants had

simply changed the font style of the letter 'L' to the extent that the same may be read as both 'L' and 'I', observed that the rival marks were deceptively similar and clearly an attempt to create an impression that Defendants were associated with the Plaintiffs. Reliance was placed on the judgments in ***Ciba Ltd. Basle Switzerland v. M. Ramalingam and S. Subramaniam trading in the name of South Indian Manufacturing Co., Madura and Another, 1957 SCC OnLine Bom 45*** and ***Pfizer Products Inc. v. Renovision Exports Pvt. Ltd. and Another, 2024 SCC OnLine Del 3140***, to buttress the argument of deceptive similarity. In ***Ciba Ltd (supra)***, the competing marks were 'Ciba' and 'Cibol' and the Bombay High Court held that the resemblance between the marks was both visual and phonetic, since the first syllable was identical and as for phonetic similarity, if the sound or pronunciation of the last syllable of Cibol is slurred over, there will be close resemblance in the two marks. In ***Pfizer Products (supra)***, looking into the rival marks VIAGRA and VIGOURA, this Court held that they exhibit a high degree of phonetic similarity inasmuch as both marks comprise of three syllables with 'Vi' as a common prefix and 'Ra' as a similar suffix, producing a strikingly similar auditory impression. The rival marks are therefore phonetically and visually deceptively similar.

12. It was further argued that Plaintiffs have been in the business of manufacturing and sale of wide range of consumer products such as water purifiers, hair dryers, geysers etc. including air coolers, fans, immersion rods under the marks HAVELLS/HAVELLS/ H HAVELL'S and perusal of their website https://havells.com/ evidences the fact that the mark HAVELLS is an integral part of domain names owned by the Plaintiffs. The

goodwill and reputation earned by the Plaintiffs owing to sale of products under HAVELLS marks can be gauged from the gross revenues earned/sales turnover, which in the financial year 2023-2024 alone was to the tune of Rs.18,550 crores. Plaintiffs have expended enormous amounts on advertisements and promotions and expenses incurred for 2023-2024 were Rs. 528 crores, which is supported by a CA certificate. Use of the HAVAI marks by the Defendants is therefore only to misrepresent to the public that they have an association with the Plaintiffs so as to encash on Plaintiffs' reputation and goodwill and pass off their goods and this is causing irreparable injury to the Plaintiffs. The confusion in the instant case is enhanced by the fact that Defendants are selling their spare parts and cooler covers for Plaintiffs' air coolers by prominently displaying the words 'HAVELLS SPARES' and photographs depicting the names of Plaintiffs' products. Any unwary consumer, who will come across the website of the Defendants will inevitably believe that Defendants are the dealers of Plaintiffs, authorized by them to sell genuine spare parts and this will also have a direct link to an association regarding the use of HAVAI marks on their products. Thus, the Defendants are acting in violation of Section 29(8) of 1999 Act and contrary to principle of 'fair use', envisaged in Section 30(2). Importantly, the fact that Defendants are selling spare parts using HAVELLS SPARES, also belies the casual stand of the Defendants taken in the written statement that they were not aware of the Plaintiffs.

13. It was urged that there is no plausible explanation in the written statement as to why Defendants adopted the marks HAVAI/ HAVAI/HAVAI and that too way different from their

registered mark HAVAI wherein 'I' is represented as 'I'. The only reason put forth for adopting the mark HAVAI is that Defendants focus on air-based products i.e. HAVA, which means air and therefore, the adoption is honest. This reason cannot be accepted for two reasons. Firstly, it does not explain the change of the registered trademark to a different font style of 'I' and secondly, Defendants also sell immersion rods, which has nothing to do with air. During the course of hearing, Plaintiffs endeavored to amicably settle the *inter se* disputes, however, Defendants were rigid about not changing the actually used trademarks including the colour combinations in the device marks so as to make them distinct from Plaintiffs' HAVELLS marks.

14. Appearing on behalf of the Defendants, Mr. Arnab Ghosh, learned counsel argued that the present suit is liable to be dismissed for want of cause of action in favour of the Plaintiffs. Defendants have never used the trademark HAVELLS or any mark deceptively similar thereto. Defendant No. 1 is a rightful owner and registered proprietor of trademarks HAVAI/ havai, registered under No. 2578982 in Class 11; 4637091 in Class 21; 4637092 in Class 24; and 6079039 in Class 22 and there is no similarity in the rival marks HAVELLS and HAVAI, either visually, structurally or phonetically. By virtue of registrations, Defendant No. 1 is entitled to use the mark lawfully and Plaintiffs have no right to question the same. Trademark HAVAI is a prominent part of the company name Havai Home Products Private Ltd., which was approved by the Registrar of Companies after thorough trademark search in all classes.

15. It was argued that Plaintiffs have essentially predicated the suit on three issues: Defendants do not have BIS registration; Defendants are infringing Plaintiffs' mark HAVELLS and its formative marks by use of the mark HAVAI, substituting the letter 'I' of the registered mark in a manner

that it can be misread and mispronounced as 'L'; and Defendants are passing off their goods as those of the Plaintiffs, encashing on their formidable goodwill and reputation. Insofar as BIS registration is concerned, Defendant No. 3 has already filed its report in favour of the Defendants that they are not violating any law under the BIS Act and based on this stand, Defendant No. 3 was deleted from array of parties vide order dated 24.12.2025. Insofar as reference to the words HAVELLS SPARES on spare parts is concerned, Defendants have removed all references from their website and literature, pursuant to undertaking given to the Court on 20.12.2025.

16. It was strenuously urged that since the HAVAI mark of Defendant No. 1 is duly registered, no case for infringement can lie as it is a settled law that one registered proprietor cannot sue the other registered proprietor. Without prejudice, even otherwise the two marks are entirely different in all respects yet during the course of hearing, Defendants made every attempt to settle the matter and gave many proposals but Plaintiffs insisted on changing the letter 'V' in the mark HAVAI to either 'W' or 'VV', which was rightly not accepted since Plaintiffs have never set up a case of similarity based on the syllable 'HAV'. It is trite that a party cannot travel beyond its pleadings. ***[Ref.: Ram Sarup Gupta (Dead) by LRs v. Bishun Narain Inter College and Others, (1987) 2 SCC 555*** and ***Bachhaj Nahar v. Nilima Mandal and Another, (2008) 17 SCC 491]***. In any event, syllable HAV is common to trade and is used by many for goods in the same class as the Plaintiffs and in law, no monopoly or exclusivity can be claimed on 'HAV'.

17. It was urged that Plaintiffs' case of passing off against Defendants is entirely misconceived and based on mere assumptions, without placing any cogent material on record demonstrating actual deception, actual confusion or dishonest adoption. There are no consumer complaints, surveys etc. and

in the absence of evidence of actual confusion, no case of passing off, which is a tort in common law based on deceit and misrepresentation, is made out. To lend support to the arguments, learned counsel relied on the judgments of this Court in ***Subway IP LLC v. Infinity Food and Others, 2023 SCC OnLine Del 150; M/s. South India Beverages Pvt. Ltd. v. General Mills Marketing Inc. & Anr., 2014 SCC OnLine Del 1953;*** and ***Stiefel Laboratories, INC & Anr. v. Ajanta Pharma Ltd., 2014 SCC OnLine Del 3405,*** highlighting the rule of anti-dissection for comparing conflicting marks, which essentially means that marks have to be seen as a whole and not dissected into component parts. In ***Stiefel Laboratories (supra)***, Court emphasised on applying the anti-dissection rule referring to McCarthy on Trade Marks and Unfair Competition and more importantly, to the observations of the Supreme Court that the commercial impression of a trademark is derived from it as a whole and not from its elements, separated and considered in detail. Reliance was also placed on ***S.M. Dyechem Ltd v Cadbury (India) Ltd., (2000) 5 SCC 573***, where the Supreme Court held that mere possibility of confusion is not sufficient and the likelihood must be real and tangible and on ***Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73***, for the proposition that likelihood of confusion must be real and must be determined based on several factors including nature of the marks, degree of resemblance, nature of goods, class of purchasers and mode of purchasing.

18. Heard learned Senior Counsel for the Plaintiffs and counsel for the Defendants.

19. Plaintiffs are the registered proprietors of trademark HAVELLS and its formative marks, with the earliest registration dating back to 1955 in Class 11 bearing registration no. 167484. The use of the mark HAVELLS

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commenced in the year 1942 and since then, the mark has been prominently, extensively and uninterruptedly used in respect of the goods for which it is registered. Plaintiffs have been using the marks HAVELLS, HAVELLS and H HAVELL'S for the business of manufacturing and sale of wide range of consumer electrical product including air coolers, fans, immersion rods etc. and this is corroborated by the documents on record, which include screenshots and information of their website http://havells.com. Documents also evidence that the mark HAVELLS is an integral part of the domain names owned by the Plaintiffs.

20. From the averments in the pleadings filed by the Plaintiffs and documents in support thereof, it is demonstrably clear that Plaintiffs have garnered immense reputation and goodwill by sale of products under the HAVELLS marks. Sales figures as also expenses incurred on promotion and advertisement for the period 2016-2017 to 2023-2024 are furnished in the plaint. Pertinently and illustratively, for the financial year 2023-2024 alone, the sales turnover was to the tune of Rs.18,550 crores and the expenses incurred were Rs.528 crores. Plaintiffs have wide social media presence on renowned and popular social media platforms such as Instagram, X and Facebook. Plaintiff No.1 is stated to be an almost $2 billion leading FMEG company and its state-of-the-art manufacturing plants are located in a number of States. Plaintiffs have also launched mobile van activity and have over 380 exclusive stores with mobile applications to shop online through e-stores. Plaintiffs have substantially invested in advertising and promotion campaigns, both through print and electronic media as also popular magazines, copies of which are on record. Plaintiffs' products are sold in

India and also exported to more than 60 countries such as Dubai, Egypt, Maldives etc. The distinctiveness of the mark HAVELLS and goodwill and reputation attached thereto is best indicated from the fact that HAVELLS has been recognised and declared as a well-known mark by this Court in ***Havells India Ltd. (supra),*** vide judgment dated 08.12.2024 and the mark is included in the list of well-known marks by the Registry of Trade Marks. For the sake of record, it be noted that HAVELLS has also earned the recognition of a well-known mark in Turkey and by WIPO. As brought forth, Plaintiffs have secured many favourable orders from this Court as also in foreign jurisdictions restraining the infringers in respect of the mark HAVELLS including a restraint on mark HAVEIIS, basis the possibility of 'II' being misread and mispronounced as 'LL'.

21. By this application, Plaintiffs seek interim injunction restraining the Defendants from using the impugned marks HAVAI, and and/or any other mark deceptively similar thereto in respect of electrical goods, *inter alia* amounting to infringement of trademark and/or passing off. Insofar as infringement is concerned, Defendants assert that one registered proprietor cannot make a claim of infringement against another registered proprietor and since the mark HAVAI is registered in favour of Defendant No. 1, no injunction can be sought under Section 29 of 1999 Act. Plaintiffs, on the other hand, take a position that the actual marks used by the Defendants are different from the registered marks and are not registered and therefore, the claim for infringement is valid and even otherwise, registration is not a defence to an action against passing off.

22. In my considered view, there is merit in the submission of the Plaintiffs that registration of a mark is not a defence to passing off. In ***S. Syed Mohideen v. P. Sulochana Bai, (2016) 2 SCC 683,*** the Supreme Court ruled that an owner of a registered trademark can bring an action against the other party for passing off invoking Section 27(2) of 1999 Act, even if the other party is a registered proprietor of a deceptively similar mark. Deciding the interplay between Section 27(2) and Section 28(3) of 1999 Act, the Supreme Court held as follows:-

> ***"28.*** *However, what is stated above is the reflection of Section 28 of the Act when that provision is seen and examined without reference to the other provisions of the Act. It is stated at the cost of repetition that as per this Section owner of registered trade mark cannot sue for infringement of his registered trade mark if the appellant also has the trade mark which is registered. Having said so, a very important question arises for consideration at this stage, namely, whether such a respondent can bring an action against the appellant for passing off invoking the provisions of Section 27(2) of the Act. In other words, what would be the interplay of Section 27(2) and Section 28(3) of the Act is the issue that arises for consideration in the instant case. As already noticed above, the trial court as well as the High Court have granted the injunction in favour of the respondent on the basis of prior user as well as on the ground that the trade mark of the appellant, even if it is registered, would cause deception in the mind of the public at large and the appellant is trying to encash upon, exploit and ride upon on the goodwill of the respondent herein. Therefore, the issue to be determined is as to whether in such a scenario, the provisions of Section 27(2) would still be available even when the appellant is having registration of the trade mark of which he is using.*
>
> ***29.*** *After considering the entire matter in the light of the various provisions of the Act and the scheme, our answer to the aforesaid question would be in the affirmative. Our reasons for arriving at this conclusion are the following.*
>
> ***30. Firstly****, the answer to this proposition can be seen by carefully looking at the provisions of the Trade Marks Act, 1999 (the Act). Collective reading of the provisions especially Sections 27, 28, 29 and 34 of the Trade Marks Act, 1999 would show that the rights conferred by registration are subject to the rights of the prior user of the trade mark. We have already reproduced Section 27 and Section 29 of the Act.*
>
> ***30.1.*** *From the reading of Section 27(2) of the Act, it is clear that the right of action of any person for passing off the goods/services of another*

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person and remedies thereof are not affected by the provisions of the Act. Thus, the rights in passing off are emanating from the common law and not from the provisions of the Act and they are independent from the rights conferred by the Act. This is evident from the reading of the opening words of Section 27(2) which are "Nothing in this Act shall be deemed to affect rights…."

30.2. *Likewise, the registration of the mark shall give exclusive rights to the use of the trade mark subject to the other provisions of this Act. Thus, the rights granted by the registration in the form of exclusivity are not absolute but are subject to the provisions of the Act.*

30.3. *Section 28(3) of the Act provides that the rights of two registered proprietors of identical or nearly resembling trade marks shall not be enforced against each other. However, they shall be same against the third parties. Section 28(3) merely provides that there shall be no rights of one registered proprietor vis-à-vis another but only for the purpose of registration. The said provision 28(3) nowhere comments about the rights of passing off which shall remain unaffected due to overriding effect of Section 27(2) of the Act and thus the rights emanating from the common law shall remain undisturbed by the enactment of Section 28(3) which clearly states that the rights of one registered proprietor shall not be enforced against the another person.*

30.4. *Section 34 of the Trade Marks Act, 1999 provides that nothing in this Act shall entitle the registered proprietor or registered user to interfere with the rights of prior user. Conjoint reading of Sections 34, 27 and 28 would show that the rights of registration are subject to Section 34 which can be seen from the opening words of Section 28 of the Act which states "Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor…." and also the opening words of Section 34 which states "Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere…." Thus, the scheme of the Act is such where rights of prior user are recognised superior than that of the registration and even the registered proprietor cannot disturb/interfere with the rights of prior user. The overall effect of collective reading of the provisions of the Act is that the action for passing off which is premised on the rights of prior user generating a goodwill shall be unaffected by any registration provided under the Act. This proposition has been discussed in extenso in N.R. Dongre v. Whirlpool Corpn. [N.R. Dongre v. Whirlpool Corpn., 1995 SCC OnLine Del 310 : AIR 1995 Del 300] wherein the Division Bench of the Delhi High Court recognised that the registration is not an indefeasible right and the same is subject to rights of prior user. The said decision of Whirlpool [N.R. Dongre v. Whirlpool Corpn., 1995 SCC OnLine Del 310 : AIR 1995 Del 300] was further affirmed by the Supreme Court of India in N.R. Dongre v. Whirlpool Corpn. [N.R. Dongre v. Whirlpool Corpn., (1996) 5 SCC 714]*

30.5. The above were the reasonings from the provisions arising from the plain reading of the Act which gives clear indication that the rights of prior user are superior than that of registration and are unaffected by the registration rights under the Act.

*31. **Secondly**, there are other additional reasonings as to why the passing off rights are considered to be superior than that of registration rights.*

31.1. Traditionally, passing off in common law is considered to be a right for protection of goodwill in the business against misrepresentation caused in the course of trade and for prevention of resultant damage on account of the said misrepresentation. The three ingredients of passing off are goodwill, misrepresentation and damage. These ingredients are considered to be classical trinity under the law of passing off as per the speech of Lord Oliver laid down in Reckitt & Colman Products Ltd. v. Borden Inc. [Reckitt & Colman Products Ltd. v. Borden Inc., (1990) 1 WLR 491 : (1990) 1 All ER 873 (HL)] which is more popularly known as "Jif Lemon" case wherein Lord Oliver reduced the five guidelines laid out by Lord Diplock in Erven Warnink Besloten Vennootschap v. J. Townend & Sons (Hull) Ltd. [Erven Warnink Besloten Vennootschap v. J. Townend & Sons (Hull) Ltd., 1979 AC 731 at p. 742 : (1979) 3 WLR 68 : (1979) 2 All ER 927 (HL)] ("the Advocaat case") to three elements : (1) goodwill owned by a trader, (2) misrepresentation, and (3) damage to goodwill. Thus, the passing off action is essentially an action in deceit where the common law rule is that no person is entitled to carry on his or her business on pretext that the said business is of that of another. This Court has given its imprimatur to the above principle in Laxmikant V. Patel v. Chetanbhai Shah [Laxmikant V. Patel v. Chetanbhai Shah, (2002) 3 SCC 65] .

31.2. The applicability of the said principle can be seen as to which proprietor has generated the goodwill by way of use of the mark/name in the business. The use of the mark/carrying on business under the name confers the rights in favour of the person and generates goodwill in the market. Accordingly, the latter user of the mark/name or in the business cannot misrepresent his business as that of business of the prior right holder. That is the reason why essentially the prior user is considered to be superior than that of any other rights. Consequently, the examination of rights in common law which are based on goodwill, misrepresentation and damage are independent to that of registered rights. The mere fact that both prior user and subsequent user are registered proprietors are irrelevant for the purposes of examining who generated the goodwill first in the market and whether the latter user is causing misrepresentation in the course of trade and damaging the goodwill and reputation of the prior right holder/former user. That is the additional reasoning that the statutory rights must pave the way for common law rights of passing off.

*32. **Thirdly**, it is also recognised principle in common law jurisdiction that passing off right is broader remedy than that of infringement. This is due* *to the reason that the passing off doctrine operates on the general principle that no person is entitled to represent his or her business as business of other person. The said action in deceit is maintainable for diverse reasons other than that of registered rights which are allocated rights under the Act. The authorities of other common law jurisdictions like England more specifically Kerly's Law of Trade Marks and Trade Names, 14th Edn., Thomson, Sweet & Maxwell South Asian Edition recognises the principle that where trade mark action fails, passing off action may still succeed on the same evidence. This has been explained by the learned author by observing the following:*

> *"15-033. A claimant may fail to make out a case of infringement of a trade mark for various reasons and may yet show that by imitating the mark claimed as a trade mark, or otherwise, the defendant has done what is calculated to pass off his goods as those of the claimant. A claim in 'passing off' has generally been added as a second string to actions for infringement, and has on occasion succeeded where the claim for infringement has failed."*

32.1. *The same author also recognises the principle that the Trade Marks Act affords no bar to the passing off action. This has been explained by the learned author as under:*

> *"15-034. Subject to possibly one qualification, nothing in the Trade Marks Act, 1994 affects a trader's right against another in an action for passing off. It is, therefore, no bar to an action for passing off that the trade name, get up or any other of the badges identified with the claimant's business, which are alleged to have been copies or imitated by the defendant, might have been, but are not registered as, trade marks, even though the evidence is wholly addressed to what may be a mark capable of registration. Again, it is no defence to passing off that the defendant's mark is registered. The Act offers advantages to those who register their trade marks, but imposes no penalty upon those who do not. It is equally no bar to an action for passing off that the false representation relied upon is an imitation of a trade mark that is incapable of registration. A passing off action can even lie against a registered proprietor of the mark sued upon. The fact that a claimant is using a mark registered by another party (or even the defendant) does not of itself prevent goodwill being generated by the use of the mark, or prevent such a claimant from relying on such goodwill in an action against the registered proprietor. Such unregistered marks are frequently referred to as 'common law trade marks'."*

32.2. *From the reading of the aforementioned excerpts from Kerly's Law of Trade Marks and Trade Names, it can be said that not merely it is recognised in India but in other jurisdictions also including England/UK (Provisions of the UK Trade Marks Act, 1994 are analogous to the Indian Trade Marks Act, 1999) that the registration is no defence to a passing off action and nor the Trade Marks Act, 1999 affords any bar to a passing off* *action. In such an event, the rights conferred by the Act under the provisions of Section 28 have to be subject to the provisions of Section 27(2) of the Act and thus the passing off action has to be considered independent "Iruttukadai Halwa" under the provisions of the Trade Marks Act, 1999.*

***33. Fourthly**, it is also a well-settled principle of law in the field of the trade marks that the registration merely recognises the rights which are already pre-existing in common law and does not create any rights. This has been explained by the Division Bench of the Delhi High Court in Century Traders v. Roshan Lal Duggar & Co. [Century Traders v. Roshan Lal Duggar & Co., 1977 SCC OnLine Del 50 : AIR 1978 Del 250] in the following words : (SCC OnLine Del para 10)*

> *"10. '16. … First is the question of use of the trade mark. Use plays an all-important part. A trader acquires a right of property in a distinctive mark merely by using it upon or in connection with his goods irrespective of the length of such user and the extent of his trade. The trader who adopts such a mark is entitled to protection directly the article having assumed a vendible character is launched upon the market. Registration under the statute does not confer any new right to the mark claimed or any greater rights than what already existed at common law and at equity without registration. It does, however, facilitate a remedy which may be enforced and obtained throughout 'the State and it established the record of facts affecting the right to the mark. Registration itself does not create a trade mark. The trade mark exists independently of the registration which merely affords further protection under the statute. Common law rights are left wholly unaffected.' [**Ed.** : As observed in L.D. Malhotra Industries v. Ropi Industries, 1975 SCC OnLine Del 172, para 16.] "*

(emphasis supplied)

***33.1.** The same view is expressed by the Bombay High Court in Sunder Parmanand Lalwani v. Caltex (India) Ltd. [Sunder Parmanand Lalwani v. Caltex (India) Ltd., 1965 SCC OnLine Bom 151 : AIR 1969 Bom 24] in which it has been held vide AIR para 32 as follows : (SCC OnLine Bom paras 1 & 2)*

> *"1. A proprietary right in a mark can be ['Iruttukadai Halwa'] obtained in a number of ways. The mark can be originated by a person, or it can be subsequently acquired by him from somebody else. Our Trade Marks law is based on the English Trade Marks law and the English Acts. The first Trade Marks Act in England was passed in 1875. Even prior thereto, it was firmly established in England that a trader acquired a right of property in a distinctive mark merely by using it upon or in connection with goods irrespective of the length of such user and the extent of his trade, and that he was entitled to protect such right of property by appropriate proceedings*

by way of injunction in a court of law. Then came the English Trade Marks Act of 1875, which was substituted later by later Acts. The English Acts enabled registration of a new mark not till then used with the like consequences which a distinctive mark had prior to the passing of the Acts. The effect of the relevant provision of the English Acts was that registration of a trade mark would be deemed to be equivalent to public user of such mark. Prior to the Acts, one could become a proprietor of a trade mark only by user, but after the passing of the Act of 1875, one could become a proprietor either by user or by registering the mark even prior to its user. He could do the latter after complying with the other requirements of the Act, including the filing of a declaration of his intention to use such mark. See observations of Llyod Jacob, J. in Vitamins Ltd.'s Application, In re [Vitamins Ltd.'s Application, In re, (1956) 1 WLR 1 : (1955) 3 All ER 827 : 1956 RPC 1] at RPC p. 12, and particularly the following : (WLR p. 10)

> *'… A proprietary right in a mark sought to be registered can be obtained in a number of ways. The mark can be originated by a person or can be acquired, but in all cases it is necessary that the person putting forward the application should be in possession of some proprietary right which, if questioned, can be substantiated.'*

2. Law in India under our present Act is similar."

(emphasis supplied)

33.2. *We uphold the said view which has been followed and relied upon by the courts in India over a long time. The said views emanating from the courts in India clearly speak in one voice, which is, that the rights in common law can be acquired by way of use and the registration rights were introduced later which made the rights granted under the law equivalent to the public user of such mark. Thus, we hold that registration is merely a recognition of the rights pre-existing in common law and in case of conflict between the two registered proprietors, the evaluation of the better rights in common law is essential as the common law rights would enable the court to determine whose rights between the two registered proprietors are better and superior in common law which have been recognised in the form of the registration by the Act."*

23. The Supreme Court in the aforesaid judgment referred to an earlier decision of the Division Bench of this Court in ***Century Traders v. Roshan Lal Duggar & Co., 1977 SCC OnLine Del 50,*** where it was held that registration is merely a recognition of pre-existing right in common law and where a conflict arises between two registered proprietors, the Court should

evaluate the better right basis the common law rights. Recently, in ***Vaidya Rishi India Health Private Limited and Another v. Suresh Dutt Parashar and Others, 2025 SCC OnLine Del 6147,*** the Division Bench of this Court once again held that passing off action will lie even against a registered proprietor of a trademark, since passing off action is predicated on common law right and is not a statutory tort.

24. It needs no reiteration that the three ingredients of the tort of passing off are: goodwill; misrepresentation; and damage and harm to the goodwill. These three ingredients are considered as the classical trinity and in this context, I may refer to a passage from the landmark judgment in ***S. Syed Mohideen (supra),*** as follows:-

> ***"31.1.*** *Traditionally, passing off in common law is considered to be a right for protection of goodwill in the business against misrepresentation caused in the course of trade and for prevention of resultant damage on account of the said misrepresentation. The three ingredients of passing off are goodwill, misrepresentation and damage. These ingredients are considered to be classical trinity under the law of passing off as per the speech of Lord Oliver laid down in Reckitt & Colman Products Ltd. v. Borden Inc. [Reckitt & Colman Products Ltd. v. Borden Inc., (1990) 1 WLR 491 : (1990) 1 All ER 873 (HL)] which is more popularly known as "Jif Lemon" case wherein Lord Oliver reduced the five guidelines laid out by Lord Diplock in Erven Warnink Besloten Vennootschap v. J. Townend & Sons (Hull) Ltd. [Erven Warnink Besloten Vennootschap v. J. Townend & Sons (Hull) Ltd., 1979 AC 731 at p. 742 : (1979) 3 WLR 68 : (1979) 2 All ER 927 (HL)] ("the Advocaat case") to three elements : (1) goodwill owned by a trader, (2) misrepresentation, and (3) damage to goodwill. Thus, the passing off action is essentially an action in deceit where the common law rule is that no person is entitled to carry on his or her business on pretext that the said business is of that of another. This Court has given its imprimatur to the above principle in Laxmikant V. Patel v. Chetanbhai Shah [Laxmikant V. Patel v. Chetanbhai Shah, (2002) 3 SCC 65] ."*

25. It would be profitable to refer to a recent Division Bench judgment of this Court in ***Western Digital Technologies Inc. and Another v. Geonix International Private Limited, Through its Directors, Gaurav Jain***

Saurabh Jain and Another, 2026 SCC OnLine Del 901, where the three ingredients of passing off have been elaborated as follows:-

> ***"85.*** *Trade mark rights, in our country, are cabined and confined within the Trade Marks Act. The "saving clause" with reference to passing off is contained in Section 27(2), which clarifies that nothing in the Act would affect the rights of action against "any person for passing off goods or services as the goods of another person or services provided by another person, or the remedies in respect thereof". It is true that the provision does not read "any person for passing off his goods or services as the goods of another person or services provided by another person…" However, we regarded it as implicit, in Section 27(2), that passing off must be of one's goods or services as those of another. In other words, if Mr X were to represent the goods of Mr Y as those of Mr Z, it would not, to our mind, constitute "passing off" as envisaged in Section 27(2).*
>
> ***86.*** *This is also clear from various judicial pronouncements of the Supreme Court which identify the ingredients of "passing off".*
>
> ***87.*** *In Kaviraj Pt Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories, the Supreme Court observed that "an action for passing off is a Common Law remedy being in substance an action for deceit, that is, a passing off by a person of his own goods as those of another". Similarly, in Satyam Infoway Ltd. v. Siffynet Solutions (P) Ltd., the Supreme Court held that "an action for passing off, as the phrase "passing off" itself suggests, is to restrain the defendant from passing off its goods or services to the public as that of the plaintiff's". We may reproduce, to advantage, paras 13 to 15 of* ***Satyam Infoway*** *thus:*
>
>> *"13. The next question is, would the principles of trade mark law and in particular those relating to passing off apply? An action for passing off, as the phrase "passing off" itself suggests, is to restrain the defendant from passing off its goods or services to the public as that of the plaintiff's. It is an action not only to preserve the reputation of the plaintiff but also to safeguard the public. The defendant must have sold its goods or offered its services in a manner which has deceived or would be likely to deceive the public into thinking that the defendant's goods or services are the plaintiff's. The action is normally available to the owner of a distinctive trade mark and the person who, if the word or name is an invented one, invents and uses it. If two trade rivals claim to have individually invented the same mark, then the trader who is able to establish prior user will succeed. The question is, as has been aptly put, who gets these first? It is not essential for the plaintiff to prove long user to establish reputation in a passing off action. It would depend upon the volume of sales and extent of advertisement.*

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

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

(Emphasis supplied)

These passages stand approvingly cited by the Supreme Court in its somewhat recent decision in Brihan Karan Sugar Syndicate Pvt. Ltd. v. Yashwantrao Moyhite Krushna Sahakari Sakhar Karkhana.

88. *Inasmuch as Section 27(2) saves the "rights of action against any person" for passing off, the right of action which is saved is, clearly, the right of action against a defendant for passing off its goods as those of the plaintiff.*

xxx xxx xxx

98. *The requirement of likelihood of confusion permeates both the tort of infringement as well as that of passing off. The principle of "initial interest confusion" requires the aspect of likelihood of confusion by the consumer to be assessed at the point of "initial interest" i.e. when the consumer first sees the goods of the defendant. This principle applies as much to passing off as to infringement, as there is no qualitative difference between confusion in one case and confusion in the other."*

26. This judgment will be incomplete without alluding to a recent judgment of the Supreme Court in ***Pernod Ricard India Private Limited and Another v. Karanveer Singh Chhabra, 2025 SCC OnLine SC 1701,*** wherein it was re-stated and re-affirmed that passing off action is a common

law remedy which protects a trader's reputation and goodwill from others, who misrepresent to the public so as to cause confusion. In ***Cadila Health (supra),*** the Supreme Court laid down parameters for deciding deceptive similarity of marks in an action for passing off as follows:-

> *"**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.*
>
> ***36.** Weightage to be given to each of the aforesaid factors depending upon facts of each case and the same weightage cannot be given to each factor in every case."*

27. Coming back to the instant case and applying the parameters laid down in the judgments aforementioned, the first thing that needs to be examined is whether the impugned marks HAVAI, and are deceptively similar to HAVELLS marks. Parties are *ad idem* that while comparing rival marks, they have to be seen as a whole and cannot be dissected and Courts are not expected to adopt a mechanical

and side-by-side comparison of the rival marks, a proposition laid down by the Supreme Court way back in 1959 in ***Corn Products Refining Co. v. Shangrila Food Products Ltd., 1959 SCC OnLine SC 11,*** followed by the judgments in ***Parle Products (P) Ltd. v. J.P. and Co., Mysore, (1972) 1 SCC 618*** and ***Khoday Distilleries Limited (now known as Khoday India Limited) v. Scotch Whisky Association and Others, (2008) 10 SCC 723,*** to refer to a few and re-affirmed recently in ***Pernod Ricard (supra).*** The following passage from ***Pianotist Co. Ltd.'s application [(1906) 23 RPC 774]*** is also relevant in the present context:-

> *"You must take the two words. You must judge of them, both by their look and by their sound. You must consider the goods to which they are to be applied. You must consider the nature and kind of customer who would be likely to buy those goods. In fact, you must consider all the surrounding circumstances; and you must further consider what is likely to happen if each of those trade marks is used in a normal way as a trade mark for the goods of the respective owners of the marks. If, considering all those circumstances, you come to the conclusion that there will be a confusion, that is to say, not necessarily that one man will be injured and the other will gain illicit benefit, but that there will be a confusion in the mind of the public which will lead to confusion in the goods — then you may refuse the registration, or rather you must refuse the registration in that case."*

28. Before comparing Plaintiffs' HAVELLS marks and the impugned marks which are subject matter of the suit, it is important to pen down that the registered mark of Defendant No.1 is HAVAI in the relevant class 11, whereas what the Defendants are actually using on their products in the market is a stylized variation of the last letter 'I' in HAVAI i.e. HAVAI and its device marks and this really is the bone of contention between the parties. Plaintiffs take a position that Defendants have mischievously chosen to adopt a font style, such that the letter 'I' is misread and mispronounced as 'L', so that an unwary consumer who has a recollection of the mark HAVELLS, buys the goods of the Defendants under an impression that

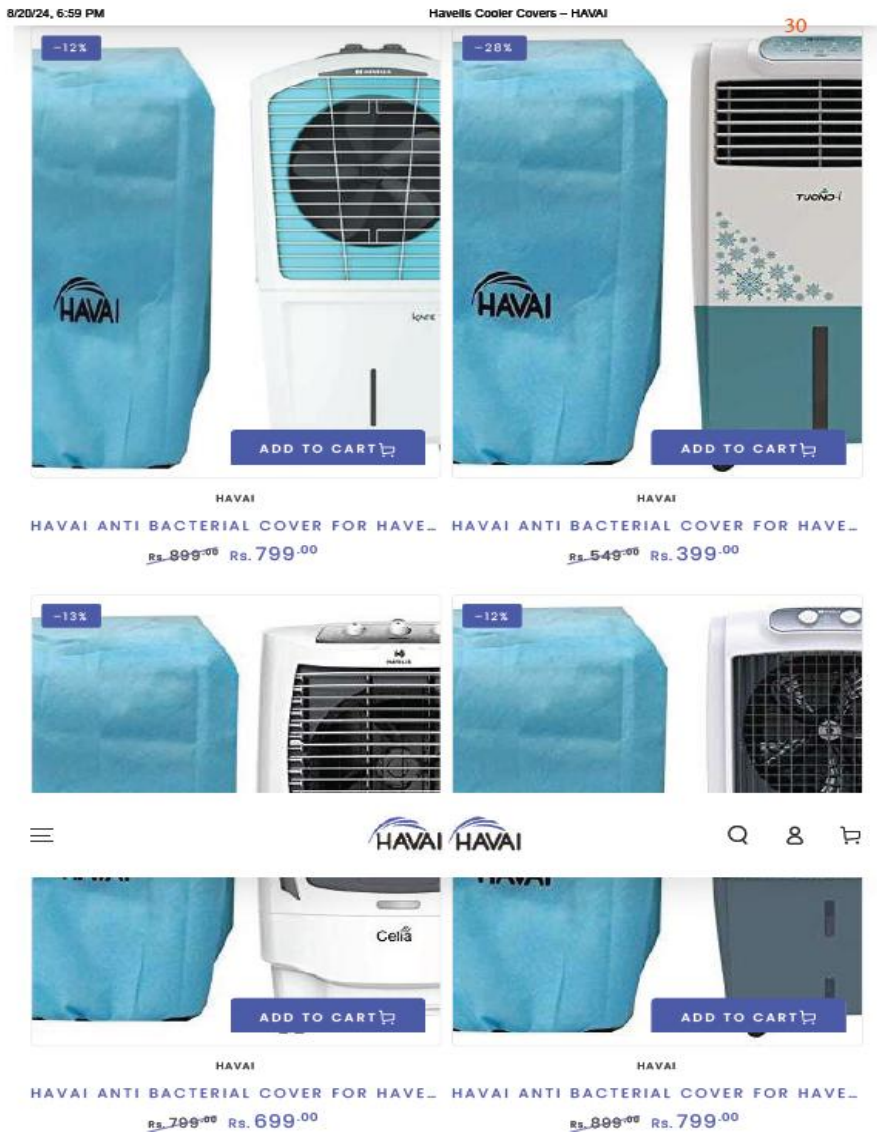
those are the goods of the Plaintiffs. I am in complete agreement with the Plaintiffs on this aspect.

29. Present case is a classic and textbook case of passing off, wherein misrepresentation is the founding pillar. Defendants are using the impugned marks, which are not only deceptively similar to Plaintiffs' HAVELLS marks but are also at variance with Defendant No.1's own registered mark HAVAI and there is absolutely no explanation for this shift away from Defendant No.1's own registered marks. For ready reference, a comparative table of Plaintiffs' HAVELLS marks; Defendants No. 1's registered mark and the impugned marks is as follows:-

PLAINTIFFS' REGISTERED HAVELLS MARKS	DEFENDANT NO.1's REGISTERED MARK IN CLASS 11	IMPUGNED MARKS ACTUALLY USED ON THE PRODUCTS
HAVELLS HAVELLS H HAVELL'S	HAVAI	HAVAI HAVAI HAVAI

30. A bare perusal of the aforesaid marks shows that the registered word mark of Defendant No. 1 ends in letter 'I' and as can be seen, 'I' has a *serif.* Owing to this feature, the mark HAVAI will be ordinarily pronounced as '*Ha-va-ee*' or '*Ha-vai*' and may not have a phonetic deceptive similarity with HAVELLS. However, *sans* the *serif* on 'I', the same is likely to be perceived as letter 'L' and resultantly, the mark HAVAI will be pronounced as 'Ha-va-L', which will be phonetically deceptively similar to HAVELLS.

The change in the stylization and font of the letter 'I' in the marks actually used, is indeed a *mala fide* attempt to sail close to HAVELLS marks and create confusion amongst members of the public. It is trite that in a passing off action, likelihood of deception is assessed on the actual representation in the market place as consumers are not privy to what exists on the Register of Trade Marks. Defendants have strained every nerve to come close to the mark HAVELLS, else there is no reason for any registered proprietor to move away from its own registered mark and it bears repetition to state that there is not a whisper in the written statement or reply to this application as to why the Defendants chose this path, save and except, to create an overall impression that HAVELLS has an association with the Defendants. If one looks at HAVELLS and HAVAI, the overall commercial impression is one of deceptive similarity in the two, the foundation being misrepresentation. In fact, in respect of the device marks where the dominant part is the word HAVAI which is deceptively similar to HAVELLS marks, Defendants have also gone an extra mile to copy the get-up as also the colour scheme i.e. black & white and red & white, calculated to show association with the HAVELLS device marks, which reinforces the argument of the Plaintiffs that the intent is only to confuse customers and members of public and trade. In ***Slazenger & Sons v. Feltham & Co., (1899) 6 RPC 531,*** Lord Lindely, LJ observed *'One must exercise one's common sense, and, if you are driven to the conclusion that what is intended to be done is to deceive is possible, I do not think it is stretching the imagination very much to credit the man with occasional success or possible success. Why should we be astute to say that he cannot succeed in doing that which he is straining every nerve to do?'* In ***Munday v. Carey, (1905) R.P.C. 273***, Kekewich, J. observed, *'Where you see dishonesty, then even though the similarity were less than it is here, you* *ought, I think, to pay great attention to the items of similarity, and less to the items of dissimilarity.*' For ready reference, screenshots depicting actual use of HAVAI marks in the market by the Defendants are as follows:-



31. The argument of the Plaintiffs that confusion gets enhanced owing to identity of the rival goods, also has merit. Defendants are selling goods such as air coolers, immersion rods, pedestal fans. The large portfolio of the Plaintiffs includes fans, coolers, immersion rods and thus there is complete identity of goods. Looking at the deceptive similarity of the rival marks, identity of rival goods and immense reputation and goodwill of HAVELLS marks, this is a case where the initial interest confusion test applies on all four corners. Division Bench of this Court in ***Under Armour Inc v. Anish Agarwal and Another, 2025 SCC OnLine Del 3784,*** underscored that confusion in the minds of customers arises at the stage prior to consummating the purchase *albeit* later the consumer may not have any doubt regarding the origin of the goods. Defendants have endeavoured to come close to HAVELLS marks and to succeed in this attempt, they have cleverly changed the letter 'I' to be read and pronounced as 'L' such that a consumer with average intelligence and imperfect recollection believes that their goods emanate from the house of the Plaintiffs or have some association or affiliation with them. The objective is to encash on the formidable reputation and goodwill of the Plaintiffs, garnered over the years, which adversely impacts the reputation of the Plaintiffs and dilutes the HAVELLS marks. Therefore, all three ingredients of the tort of passing off: goodwill of the Plaintiffs; misrepresentation by the Defendants; and damage and injury to the Plaintiffs' goodwill, are *prima facie* satisfied.

32. Plaintiffs have been able to establish a *prima facie* case for grant of temporary injunction. Balance of convenience also lies in favour of the Plaintiffs, who have been using the well-known mark HAVELLS and its formatives from decades and against the Defendants who have dishonestly chosen to use a deceptively similar mark HAVAI (word and device), so as to

create confusion amongst the members of the public and pass off their identical goods. In these facts, irreparable harm and injury shall be caused to the Plaintiffs if the temporary injunction is not granted.

33. In light of the above, Defendants and all others acting on their behalf are restrained from selling, marketing, advertising and offering for sale the impugned goods under the impugned trademarks HAVAI, HAVAI and HAVAI, which are deceptively similar to Plaintiffs' trademarks HAVELLS/HAVELLS and their formative marks and/or any other mark deceptively similar thereto, amounting to passing off. The temporary injunction shall operate during the pendency of the suit and needless to state the observations and findings in the present judgment are only tentative and *prima facie* and shall not affect the final adjudication of the suit.

34. Application is allowed to the aforesaid extent and disposed of.

JYOTI SINGH, J.

JULY __13__, 2026/YA/*S.Sharma*