

Present: Mr. Punit Bali, Senior Advocate alongwith
Mr. Sidharth Bambha, Mr. Arvind Sandhu,
Mr. Luv Virmani, Shri Ajay Sahni, and Mr.
Abhirath Prashar, Counsels for plaintiff.

Mr. Akshay Bhan, Senior Advocate alongwith Mr.
Gurpreet Singh Kahlon, Ms. Vindhya S. Mani, Shri
Shashank Kapoor, Shri Ankit Sahni and Mr. Ritvik
Sharma, Counsels for defendant.

ORDER:

By this common order I shall dispose of two applications under Order 7 Rule 10 CPC and under Order 7 Rule 11 CPC, filed by defendant for return of plaint and for rejection of plaint.

2. Facts in brief, relevant for the disposal of instant application are that, the plaintiff Piccadily Agro Industries Limited, which is a public limited company incorporated under the provisions of Companies Act, 1956, having its registered office at village Bhadson, Umri-Indri Road, Tehsil Indri, District Karnal has filed a suit under sections 27 to 29, 134 and 135 of Trade Mark Act, 1999 (for short 'The Act') for permanent injunction restraining violation of rights in the trade marks 'CASHMERE, CASHMIR and its formative variants, infringement, passing off, unfair competition, dilution, misrepresentation, damages, rendition of accounts, delivery up etc.

3. The defendant-applicant submitted reply denying all the allegations leveled by plaintiff and also filed applications under Order 7 Rule 10 and under Order 7 Rule 11 Code of Civil Procedure (CPC), 1908 for return and rejection of plaint on the ground that neither there exists any cause of action in favour of plaintiff nor the court at Karnal has jurisdiction to decide the case.

4. Rejoinder was also filed to the reply of the defendant in which all the averments have been re-affirmed and reasserted by denying the stand of the defendant taken in its reply.

At the very outset learned counsel argued that neither the defendant resides or carry on business within the territorial limits of this court nor the plaintiff has been able to adduce any evidence, even prima

facie, to suggest that the defendant has launched its products under the trademark "THE SPIRIT OF KASHMYR" in Karnal. Therefore, allegations in the plaint, even if taken on demurrer, do not confer jurisdiction to this court to adjudicate the present dispute which power can not be exercised solely on the basis of speculative and unsubstantiated allegations of the plaintiff, which has simply invoked jurisdiction of this court by relying on the accessibility of the defendant's website and Instagram page within its territorial jurisdiction, as mere accessibility of any website of the defendant, without active targeting of consumers in Karnal, is insufficient to create cause of action for the purpose of jurisdiction under the CPC in favour of plaintiff. Learned counsel argued that as per established judicial precedents, to confer jurisdiction, based on online activity, completion of a commercial transaction through the website is necessary, but liquor being a product subject to excise duties, is not permitted to be sold online within the jurisdiction of this court in Karnal. Learned counsel argued that in **Banyan Tree Holding (P) Limited vs. A. Murali Krishna Reddy and Ors. 2010 (42) PTC 361 (Del)** the Hon'ble Full Bench in clear terms stated that in a case for trademark infringement or passing off, for a Court to have territorial jurisdiction, the plaintiff must plead and produce material to prima facie show that some commercial transaction using the defendant's website was entered into by the defendant with a user of its website within the forum state which resulted in some injury or harm to the Plaintiff within the forum state. The mere hosting of a website which can be accessed by anyone within the territorial jurisdiction of this court or even posting advertisements

on a passive website short of entering into a commercial transaction does not give rise to a cause of action within the territorial jurisdiction of this Court. However, learned counsel argued that it is apparent that there is no pleading to demonstrate any sale, invoice, commercial use of the Defendant's mark "THE SPIRIT OF KASHMYR" within the territorial jurisdiction of this court. Moreover, there is no pleading in line with the decision in **Banyan Tree** to show specific targeting of customers via an interactive website hosted by the Defendant in which an actual commercial transaction was carried out resulting in consequential injurious effect on the Plaintiff within the territorial jurisdiction of this court. To substantiate his arguments, learned counsel further placed reliance upon the case titled as **Federal Express Corporation vs Fedex Securities Ltd. & Ors [2017 (71) PTC 155 (Del)]**; and **Vikrant Chemico Industries Pvt. Ltd. vs. Shree Gopal Engineering and Chemical Works Pvt. Ltd., 2025 DHC 7057**.

5. Learned counsel next submitted that the plaintiff cannot invoke the territorial jurisdiction of this court simply on the basis of trademark applications, filed by the defendant on a 'pan-India' basis, as generally the trademark applications are normally filed to obtain rights in all of India, unless express intention to the contrary is made by the applicant. Secondly, and more crucially, defendant's trademark applications being filed without any geographical restrictions do not create territorial jurisdiction in Karnal, because that would enable a party to initiate suit anywhere in India, which is an undue expansion of principles of jurisdiction and also tantamount to forum shopping. Otherwise also, mere filing of trademark applications is

not sufficient to confer jurisdiction based on a cause of action, on its own. In support of his submission, he placed upon reliance in case titled as **K. Narayanan & Anr. vs. S. Murali, 2008 (10) SCC 479.**

6. Learned counsel next argued that the plaintiff has filed application under Section 134 of the Trade Marks Act, 1999 (the Act') on the ground that its place of business is in Karnal. However, law is well settled that such jurisdiction is limited to infringement actions only by virtue of Section 134 (2) of the Act and not passing off. The present suit is a composite suit for two different causes of action: (a) passing off and (b) infringement of trademark. Placing reliance upon the case titled as **Dhodha House v. S.K. Maingi, (2006) 9 SCC 41**, and **Dabur India Ltd. vs. K.R. Industries, (2008) 10 SCC 595**, learned counsel contended that it is now well settled that in case of filing of a composite suit i.e. a suit combining two or more causes of action, the court can adjudicate the matter only, if it has jurisdiction over all the causes of action. Therefore, learned counsel contended that if the court does not have jurisdiction over any single cause of action, then such court cannot adjudicate the said composite suit for lack of jurisdiction.

7. Learned counsel further submitted that it is established law that the court must record a finding on the prima facie satisfaction on the applications seeking return and rejection of the plaint under Order 7 Rule 10 and 11 of the C.P.C at the very first instance, before deciding on the issue of interim injunction. In support of his submission, learned counsel relied upon the case titled as **Asma Lateef & Anr. v. Shabbir Ahmad & Ors. (2024) 4**

SCC 696. He further argued that it is also well settled by now that where a question of territorial jurisdiction arises, then trial courts, before grant of injunction, must satisfy itself that it has territorial jurisdiction. In support of his submission he learned counsel relied upon case titled as **Shree Subhlaxmi Fabrics (P) Ltd. v. Chand Mal Baradia (2005) 10 SCC 704** and **Munish Kumar Singla v. Jollibee Foods Corporation 2017 SCC OnLine Del 11823**. It is contended that in para 95 of the plaint under the head 'Cause of Action' and para 96 of the plaint, titled 'Jurisdiction', the Plaintiff asserts territorial jurisdiction under Section 20 CPC, on the basis that the defendant was advertising through Instagram that is accessible within the jurisdiction of Karnal and on the basis that defendant's trademark applications are not restricted geographically. But learned counsel submitted that none of these assertions are sufficient to fulfil the test of cause of action as liquor is an excisable product and not available for sales online, in India, as held in **Banyan Tree's case (supra)**. It is further stated that there is no mention whatsoever in the plaint concerning any bottling plant of the defendant in Karnal.

8. Learned counsel argued that as far as passing off is concerned, the lack of maintainability of suit in this court for want of jurisdiction is evident on account of a lack of defendant's presence in Haryana and (b) lack of sales by Defendant in Haryana. Learned counsel contended that the defendant had filed application for excise approval for vodka products under the mark, 'THE SPIRIT OF KASHMYR' in Haryana (Gurugram) on 20.08.2025 which is post-filing of the suit, whereas on the date of filing the

suit, that is on, 30.07.2025, there was no application filed for excise license approval by the defendant in Haryana. Otherwise also, the defendant subsequently on 25.09.2025 withdrew said application for excise approval in Haryana. As on date, the defendant has no excise approval for vodka under the mark “THE SPIRIT OF KASHMYR” in Haryana. Therefore, there is no question of any imminent threat of launch to justify even a Quia Timet action and therefore there is no question of this court having jurisdiction to decide this case. In support of his submissions, learned counsel placed reliance upon **Shree Nath Heritage Liquor Pvt. Ltd. & Anr, v. Octaga Green Power & Sugar Co. Ltd. & Ors. 2017 SCC OnLine Del 9137; and Radico Khaitan Ltd. v. Nakshatra Distilleries & Breweries Ltd. & Anr. 2017 SCC OnLine Del 7682.**

9. Learned counsel further relied upon **New Life Laboratories Private Limited v. Dr Ilyas New Life Homoeo; Herbals Private Limited and Anr. MANU/DEOR/238989/2023 and Indovax Pvt. Ltd. v. Merck Animal Health and Ors. (2017 SCC OnLine Del** to argue that courts have held that to adjudicate on an application under Order XXXIX Rules 1 and 2 of the CPC, the court has to be convinced that it has territorial jurisdiction in the matter. While averring, that the plaintiff has an apprehension that the defendant may expand their activities to Haryana, or to areas within the territorial jurisdiction of this court, there is not a scintilla of material, placed on record by the plaintiff, to justify, or even explain the basis of, this apprehension. With these submissions, learned counsel contended that this

court is not having jurisdiction to try the case in hand and prays for acceptance of application and return of plaint.

10. Now as far as application under Order 7, Rule 11 CPC is concerned, learned counsel argued that the Plaintiff has never used the registered 'CASHMERE' trademark in respect of its goods or products, since 2015, therefore, plaintiff cannot state that cause of action has arisen as without use, there is no confusion that could arise in the minds of consumers and members of trade, so as to subject the plaintiff to any harm or injury. Further, prior to the filing of the suit, the defendant has already challenged the validity of the 'CASHMERE' trademark by way of rectification proceedings before the Trade Marks Registry, inter-alia on account of non-use and the said challenge is currently sub-judice. Learned counsel argued that Section 28(1) of the Act confers, on the registrant of a valid registered trade mark, two rights, viz., the right to exclusive use of the mark for the goods or services in respect of which it is registered, and the right to seek relief against infringement, where infringement, within the meaning of section 29 of the Act, is found to exist. The definition of "infringement" stems from Section 29 of the Act and each sub-section of Section 29 starts with the word "a registered trademark is infringed where ...". As such, it is registration of the mark in favour of the plaintiff which entails infringement, if the acts of the defendant fall within one or other of the sub-sections of Section 29. However, the lack of use of the registered mark becomes a material factor of relevance and consideration, when the ground of non-use has been invoked by the defendant, in the

instant case, prior to the institution of the infringement suit. Learned counsel further submitted that section 47 of the Act has set out the consequences of non-user, that is a mark which is not used for a considerable period of time, the same is liable to be removed from the register of Trade Marks. Therefore, the assertion by the plaintiff that suit for infringement under the provisions of Sections 28 & 29 of the Act, can be filed by a 'registered proprietor' in respect of a 'registered trademark' and to obtain a permanent injunction against the defendant under the provisions of Section 135 of the Act, is baseless and without any substance. The Plaintiff has not 'used' the registered trademark 'CASHMERE', as per Section 2(2)(c) of the Act upon, or in any physical or in any other relation whatsoever, in relation to vodka products not only are the marks of the plaintiff and Defendant, wholly dissimilar, the plaintiff, has not been able to show any evidence or basis whatsoever, to establish use or reputation of its registered mark 'CASHMERE' in India since the year 2015. Moreover, learned counsel argued that though the law is well settled that the object of the Act is to protect the proprietary rights of a registered trademark holder, but at the same time the object is not to facilitate any monopoly of such registered trademark holder, despite non-use of the trademark by him as contemplated by the Act. Placing reliance upon **Allegran Inc. & Anr. v. Intas Pharmaceuticals** 2012 SCC OnLine Del 5293; **Fedders Lloyd Corporation Ltd. v. Fedders Corporation & Anr.** 2005 SCC OnLine Del 443; **Veerumal Praveen Kumar v. Needle Industries (India) Ltd.,** 2001 SCC OnLine Del 892 and **Cluett Peabody & Co. Inc. v. Arrow Apparals** 1997 SCC OnLine

Bom 574, learned counsel argued that a trademark has no meaning, even if it is registered, unless it is used in relation to goods and/or services. The Courts have considered that non-use of trademark does have a bearing in action for infringement specially at the interlocutory stage and equities would have to be balanced in such a situation. If there is non-user for a long period of time, then by mere registration of the mark continuing the Plaintiff will not be entitled to any injunction.

11. Learned counsel further argued that even in cases where Courts have held that use may not be relevant for asserting trademark infringement, but have considered whether a rectification petition was filed or not. In the instant case, the fact that the Defendant filed a rectification petition against the registered mark as 'CASHMERE' inter alia on non-use, much before the institution of the suit by the Plaintiff, becomes a material consideration. In support of his submission, learned counsel placed **reliance upon Jaquar & Co. (P) Ltd. v. Ashirvad Pipes (P) Ltd., 2024 SCC OnLine Del 2281; Kamal Raheja v. Hahnemann Pure Drug Co., 2025 SCC OnLine Del 7718; Bodhisattva Charitable Trust And Ors v. Mayo Foundation for Medical Education and Research 2025: DHC: 6317-DB of Wow Momo Foods Pvt Ltd. v. Wow Burger & Anr, 2025 SCC OnLine Del 6545 and Bharat Biotech International Ltd. vs. Optival Health Solutions Pvt. Ltd. & Anr. 2020 SCC Online Del 852 and Goethe-Institut E.V. vs. Abhishek Yadav and Anr. 2025 SCC Online Del 2968.**

12. On the other hand learned counsel for the plaintiff argued with vehemence that plaintiff is the registered proprietor of the trade mark

“CASHMERE” since 24.03.2015 and under the provisions of section 28 read with section 29 (1) (2) and (9) of the Act has the sole and exclusive statutory, proprietary right to use and reproduce the aforesaid trade mark in respect of specification of goods so registered and to legally interfere and object to the adoption and/or use by any other person of a mark which is structurally or visually or phonetically or conceptually identical/deceptively similar being used/proposed to be used in respect of goods which are same/similar for which such registration has been obtained by the plaintiff and it being a statutory right no other consideration/factor is required to be established/proved for grant of such injunction if the competing marks ‘**CASHMERE**’ of the plaintiff on the one hand and ‘**KASHMYR**’ with the prefix ‘**The Spirit of**’ the defendant on the other hand are held to be deceptively similar in terms of Section 2 (1) of the Act. Further, learned counsel argued that the plaintiff filed its first application for the registration of trade mark ‘**CASHMIR**’ and its variations, from 28.12.2023 onwards are also pending registration. The plaintiff formally commercially launched its vodka product in the market under trade mark ‘**CASHMIR**’ on 23.05.2025 and as per law informed the statutory authority, i.e. Bombay Stock Exchange vide letter of even date. However, the pre-launch activities of plaintiff commenced much earlier than the aforementioned date. Whereas, learned counsel argued that, the defendant subsequently adopted and used the phonetically/conceptually identical and visually/structurally near identical trade mere ‘**KASHMYR**’ with the inconspicuous prefix ‘**The Spirit of**’ for the first time on 28.07.2025. This, learned counsel contended that

itself shows that the plaintiff is prior adopter and continuous user of trade mark 'CASHMIR' for vodka and has built even in such short span of time a substantial goodwill and reputation in the same. Learned counsel contended that defendant has no registration for the impugned mark 'KASHMYR' and/or 'KASHMYR' with the prefix "The Spirit of" for any of its other variations till date with the office of learned Registrar of Trade Mark. Though the defendant claims to have first adopted the impugned trade mark 'KASHMYR' on 23.09.2024, when the defendant applied for the registration in trade mark registry under no.6637968 on a 'proposed to be used' basis, but even then the fact remains that defendant is a subsequent adopter of the said impugned trade mark at least by 9 months.

13. Learned counsel next argued that according to defendant it is not selling its products 'The Spirit of Kashmyr' in Haryana, but it is admitted position on record that defendant had filed for an application with Deputy Excise and Taxation Commissioner (Excise Gurugram) on 20.08.2025 for grant of license for sale of its impugned products within State of Haryana by paying a fee of Rs.4,50,000/- for the year 2025-27. However, after grant of injunction in favour of plaintiff earlier, vide order dated 23.09.2025, the said application was withdrawn by the defendant. Neither in the aforesaid withdrawal application nor in its reply to the stay application nor in the written statement, the defendant has stated that it does not have any intention to do any business in respect of impugned products with the jurisdiction of this court and nor that in future also the defendant shall not conduct any business of manufacturing/marketing of said

impugned products within the jurisdiction of this court. The defendant has also admitted that it has a bottling unit in Karnal, Haryana, which further fortify the apprehension of plaintiff that the defendant has every intention to sell its impugned products within the State of Haryana and within the jurisdiction of this court. Hence, suit filed by the plaintiff for the purpose of jurisdiction in respect of passing off qualifies to be a Quia Timet action, which is fully maintainable. Learned counsel argued that even otherwise, the instant suit filed by the plaintiff is a composite suit for the infringement of registered trade mark 'CASHMERE' registered since 2015, which is valid and subsisting as on date and for an action of passing off for use of a trade mark which is deceptively similar to prior adopted, prior used and well reputed plaintiff's mark 'CASHMIR' for identical goods, i.e. vodka. The defendant is also advertising its impugned products through its website and on Instagram page which is accessible within the jurisdiction of this court.

14. Learned counsel argued that in the year 2015, the plaintiff conceived the trade mark 'CASHMERE' and thereafter filed applications for registration of the same before the Trade Mark Registry. The plaintiff had expressed its interest to launch premium vodka under the said brand name. The plaintiff wanted to present beverages which represent purity, elegance and regional homage, to the world. The plaintiff planned to use pristine waters of Kashmir valley in its beverages, in its endeavour to expand its premium portfolio. Since February 2015, the plaintiff had been taking active steps to launch its product like selling various e-mails to various vendors for placing purchase orders for vodka bottles engaging

blending experts; bottle designers for registration of trademark 'CASHMERE' in classes 32 and 33 in USA; UK; EUROPE, SINGAPORE; ISRAEL' CYPRUS; EGYPT AND IRAN and dealing with objections raised by third parties also in this regard. In continuation of the pre-launch activities related to the goods, the plaintiff modified and conceived a series of marks while retaining identical phonetics, and subsequently filed applications for the said marks Kasmeeer, Kasheer, Casmira, Casmir and Cashmir with Trade Mark Registry. It is submitted that since the end product of the plaintiff is vodka, the brand name Cashmir/Cashmere adopted for the same has no nexus with the product, i.e. vodka. In the year 2019, after much effort, the plaintiff was able to procure a fistful 2000 year old Indian heritage wheat variety called 'SONA MOTI', which had nearly gone extinct. Over the next few years plaintiff carefully cultivated and only in the year 2025, had a sufficient crop to distill a small batch of vodka and finally on 23.05.2025, officially launched vodka 'CASHMIR', which has seen 200% growth in terms of weekly sale. Learned counsel argued that the above facts clearly demonstrate that trademark CASHMIR, Cashmere and its variants were conceptualized well in advance of its intended launch. As early as November 2019, the plaintiff initiated brand development discussions with international design agencies, and by May 2022, it had formally commenced the process of international trademark registration of the mark "CASHMERE" across multiple jurisdiction. Learned counsel contended that on 23.05.2025, by way of press release, the plaintiff announced the launch of plaintiff's product 'CASHMIR' vodka and

informed Bombay Stock Exchange Portal at 16:20:13 IST. Immediately thereafter, defendant filed rectification application bearing no.287500 against the plaintiff's trademark 'CASHMERE' registered under the application no.2928490 at approximately 08:53 PM IST on the same date. The temporal proximity between the public launch of 'CASHMIR' vodka and the filing of the rectification by the defendant, i.e. after five hours on the same date, clearly demonstrates that the said filing was prompted not by any genuine legal grievance, but by the announcement of the launch itself. This timing, when viewed in the light of the sequence of events, gives rise to an irresistible inference of mala-fide intent, and is a textbook example of an opportunistic litigation strategy aimed at frustrating the legitimate market entry and brand expansion efforts of the plaintiff. Learned counsel argued that rectification application filed by defendant is still pending and law is well settled that so long a trademark is registered even if there is cancellation petition pending all the statutory rights of such registered trademark marks are fully enforceable. It is also well established law by now that a registered trademark mark even not in use grant exclusive rights to the registered proprietor and a suit for infringement of trademark is maintainable, because the registration of a trademark grants exclusive statutory rights whether used or not and the defendant is under a duty to conduct a search of register of trademarks to ascertain if any identical/similar marks already exist. Moreover, the defendant is also under a legal obligation to establish user prior to the date of registration/use whichever is earlier and can not be permitted to use an infringing mark

where such registration is not in use and the remedy available to such defendant is only to apply for cancellation and await its outcome. In this case, learned counsel argued that trademark 'CASHMERE' was got registered by the plaintiff on 24.03.2025 and plaintiff also applied for registration of trademark CASHMIR on 23.05.2025 and after necessary preparatory activities officially launched its premium vodka CASHMIR on 23.05.2025, whereas defendant launched its vodka "The Spirit of Kashmyr" on 28.07.2025, which is not only later in time, but also has phonetic similarities on account of which there is every likelihood of confusion among the customers, who may purchase product of defendant thinking the same to be product of plaintiff on account of which plaintiff may not only suffer financially, but would also lose goodwill, which the plaintiff has earned over the years. It is also argued that a single suit for combined causes of action in respect infringement and passing off is maintainable. A prior use of a trademark must be protected and such use may not be substantial. Learned counsel also argued that an application under Order 7 Rule 11 CPC is to be decided on a demurrer and moreover by way of such application, a plaint cannot be rejected in part. With these submissions, learned counsel prays for dismissal of the application. In support of his submission, learned counsel placed reliance upon the following judgments:

- i) **PUMA SE vs. D.K. Arora, MANU/DE/4825/2022 (DB).**
- ii) **Sanjeev Kumar Juneja and Anr. vs. Terrace Pharmaceuticals Pvt. Ltd. 2026 SCC Online P&H 644.**
- iii) **Ramesh B. Desai and Ors. vs. Bipin Vadilal Mehta and Ors. MANU/SC/2996/2006.**

- iv) Central Bank of India and Ors. vs. Prabha Jain and Ors.
MANU/SC/0095/2025.
- v) Century Traders vs. Roshan Lal Duggar,
MANU/DE/0153/1977.
- vi) S. Syed Mohideen vs. P. Sulochana Bai,
MANU/SC/0576/2015.
- Vii) Ishi Khosla vs. Anil Aggarwal and Ors.
MANU/DE/7192/2007.
- Viii) Hindustan Pencils (P) Ltd. vs. India Stationary Products
Co. and Ors. MANU/DE/0383/1989.
- ix) Shree Nath Heritage Liquor Pvt. Ltd and Ors. vs. Allied
Blender and Distillers Pvt. Ltd., MANU/DE/1933/2015.
- x) The Indian Hotels Company Ltd. And Ors. vs. Jiva
Institute of Vedic Science and Culture,
MANU/DE/0892/2008.
- xi) Under Armour, Inc. vs. Aditya Birla Bashion and Retails
Ltd., MANU/DE/2580/2023.

15. I have heard counsel for the parties and perused the record of the case, written submissions and judgments cited at bar minutely and carefully.

16. The plaintiff has filed suit under sections 27 to 29 and 134 and 135 of the Trade Mark Act, 1999 for restraining the defendants from infringement of its registered trade mark CASHMERE and further to restrain the defendant from selling Vodka under the name and style of “THE SPIRIT OF KASHMYR” on account of violation of its mark ‘CASHMIR’, which is yet to be registered. The defendant has moved instant application under Order 7 Rule 10 CPC for return of plaint on the ground that this court lacks jurisdiction to decided suit, as neither the defendants are living or

residing in territorial limits of this court nor there is prima facie evidence to suggest that the defendants has launched its product under the trade mark “THE SPIRIT OF KASHMYR in Karnal and the plaintiff has filed suit only on the ground of accessibility of defendant’s website and Instagram page within its territorial jurisdiction, whereas in **Banyan Tree Holding (P) Limited** and **Federal Express Corporation’s** and **Vikrant Chemico Industries Pvt. Ltd.’s case (supra)**, it has been held that in the absence of any material on the part of plaintiff to even prima facie show some commercial transactions on behalf of defendants in the forum State on the basis of hosting of website which can be accessed by anyone, the territorial jurisdiction of forum State does not give rise to cause of action. It has also been argued that no doubt, the defendants has filed application for registration of trade mark “THE SPIRIT OF KASHMYR” on PAN India, but the same will also not confer any jurisdiction to court at Karnal, because the trade mark application are generally filed to obtain rights in all over India unless express intention to the contrary is made out by the applicant. Such application without any geographical restrictions do not create territorial jurisdiction in Karnal. Otherwise that would enable a party to initiate suit anywhere in India, which is against the law. Moreover, mere filing of trade mark application is not sufficient to confer jurisdiction based on a cause of action on its own. It has also been argued that no one can sell liquor online or otherwise without first obtaining excise license. Since the defendants are not having any license to sell liquor in Haryana, therefore, this court has no jurisdiction to try and decide this case. However, these

submissions are devoid of merit. In case titled **Puma S E's case (supra)**, it has been held that the application under Order 7 Rule 10 CPC is to be decided at a demurrer by accepting all submissions made in the plaint to be true. Further, the Hon`ble Supreme Court of India in case titled **Expnar Sa s. Eupharma Laboratories Ltd. (2004) 3 SCC 688** has observed as under:

“9. Besides, when an objection to jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts as pleaded by the initiator of the impugned proceedings are true. The submission in order to succeed must show that granted those facts the court does not have jurisdiction as a matter of law. In rejecting a plaint on the ground of jurisdiction, the Division Bench should have taken the allegations contained in the plaint to be correct. However, the Division Bench examined the written statement filed by the respondents in which it was claimed that the goods were not at all sold within the territorial jurisdiction of the Delhi High Court and also that respondent did not carry on business within the jurisdiction of the Delhi High Court. Having recorded the appellants objections to these factual statements by the respondents, surprisingly the Division Bench said:

“Admittedly, the goods are being traded outside India and not being traded in India and as such there is no question of infringement of trade mark within the territorial limits of any court in India what to say of Delhi.”

17. Thus, turning back to the case in hand, it is clear that the averments in the plaint have to be considered bearing aforesaid principles in mind as laid down by the Hon`ble Apex Court. In the present case, the plaintiff has categorically averred that the defendant, at the time of filing the instant suit had approached its existing market network, through stockists, distributors, agents and was also in the process of appointing fresh distributors, agents within jurisdiction of this court for marketing its impugned products. The defendants instagram page containing and

depicting impugned mark alongwith its website clearly amounts to advertise its impugned products within the jurisdiction of this court in as much as the said instagram page of defendant was accessed by the plaintiff representative, which is within the territorial jurisdiction of this court. It is also averred that the defendants carry all the business activities PAN India including within Karnal which shows that the defendant is bound to sell, if it has not already sold its products bearing the impugned marks of the defendants within the territorial jurisdiction of this court. It transpires from the record that the plaintiff got registered its trade mark "CASHMERE" on 23.03.2015 for beer and vodka. The defendant got registered its trade mark "THE SPIRIT OF KASHMYR" on 28.07.2025. The suit was filed on 30.07.2025. In application under Order 39 Rules 1 and 2 read with section 151 CPC plaintiff interalia averred that the defendant is allegedly in the process of applying for or has already applied for excise license for its products in territorial limits of this court and has consequently approached its marketing network through its stockists etc. The defendants denied these allegations of plaintiff being mere assertions or hear-say without any support or substantiation by any cogent documentary evidence. However, in the written statement, the defendants have admitted and placed on record copy of application for grant of excise licence dated 20.08.2025, applied to Deputy Excise and Taxation Commissioner, (Excise Gurugram) for approval of labels for the impugned trade marks alongwith its description, prefixes/suffixes for the year 2025-2027 for manufacturing/selling of said impugned products of the defendants within the State of Haryana. No

doubt, the said application had already been withdrawn by the defendants on 25.09.2025, but that was done two days after passing of earlier injunction order dated 23.09.2025 by the predecessor of this court. The suits on the basis of cause of action on fear and apprehension is commonly known as Quia Timet Suit which in legal terminology is defined as action to obtain injunction and restrain a threatened act, which, if done, would cause substantial damage to the plaintiff. The Division Bench of the Hon'ble Delhi High Court in **PUMA S E's case (supra)**, has held that :-

21. There is another aspect, i.e., the apprehension of the plaintiff that the defendant would launch and start manufacturing the product in Delhi, that needs to be considered. The suits on the basis of cause of action on a fear and apprehension is commonly known as quia timet suit which are latin words. In legal terminology, it is defined as action to obtain injunction and restrain a threatened act, which, if done, would cause a substantial damage to the plaintiff. The Division Bench of this Court in the case of Allied Blenders & Distillers Pvt. Ltd. v. Prag Distillery Pvt. Ltd.&Anr.: MANU/DE/0498/2017, held as under:

“10. If an application under Order VII Rule 10 of the Code is to be decided on the assumption that the averments made in the plaint are correct, then, it will have to be assumed that there is a reasonable apprehension that the defendants would sell their product in Delhi bearing the impugned mark and label. There is no dispute with the proposition that a quia timet action is based upon an apprehended use and is preventive in nature intended to prevent apprehended wrong and an anticipated mischief. If we were, for the time being, to ignore the fact that the respondent No. 1/defendant No. 1 was already selling the impugned product under the impugned mark and label in Andhra Pradesh, then the mere fact that the plaint contained an averment that there was credible and imminent apprehension that the infringing product would be launched by the defendants within the territorial jurisdiction of this court, would by itself constitute a cause of action. If this be the case, can it be said that just because the defendants were already selling the product in Andhra Pradesh it would take away part

of the cause of action which was preventive of a future conduct on the part of the defendants? We think not.

11. We are of the view that the learned single Judge fell in error when he took the view that although the appellant/plaintiff had averred that it had an apprehension that the defendants would sell their product in Delhi, the said apprehension was not substantiated by any material which would indicate a reasonable ground for the plaintiff to apprehend the same. We may point out that substantiation of an averment in a plaint by other material would come later. At the stage of filing of the plaint, it is only the averment that has to be made with regard to a material fact. Substantiation is a part of evidence.”

22. It was categorically held that the stage for substantiation of an averment in the plaint by other material would come later and at the stage of filing of the plaint, it is only the averment that has to be made with regard to the material fact. Substantiation is part of evidence. In our opinion, the learned Commercial Court fell in error in returning the plaint by exercising power under Order VII Rule 10, CPC.

23. Clearly, if the averments in the plaint are accepted to be true, the learned Commercial Court would definitely have the territorial jurisdiction to entertain the suit. As held by the Apex Court and reiterated by this Court in various judgments as referred above, we have no hesitation to hold that the application under Order VII Rule 10, CPC, is to be considered on demurrer; that is, the averments made in the plaint are to be assumed as correct.

18. It has also been argued by the counsel for defendant that the plaintiff has filed application under Section 134 of the Act on the ground that its place of business is in Karnal, whereas the law is well settled that such jurisdiction is limited to infringement actions only and not for passing off. Placing reliance upon in **Dhodha House’s and Dabur India Ltd.’s case (supra)**, learned counsel for the defendant argued that in case of composite suit, i.e. suit containing two or more causes of action, the court can adjudicate the matter only, if it has jurisdiction over all the causes of action.

Since this court does not have jurisdiction over any single cause of action, therefore, the court can not adjudicate the said composite suit for lack of jurisdiction.

19. There is no dispute about the proposition of law settled in the cited cases and the same are source of guidance. However, each case depends upon its own facts. In the case in hand, the plaintiff has filed suit qua infringement of its registered trade mark 'CASHMERE' alongwith passing of its earlier used mark 'CASHMIR' under section 134 of the Act for registration of which, application has already been filed by plaintiff with Trade Mark Registry. As discussed above, defendant is selling its impugned products under the name of "THE SPIRIT OF KASHMYR" in various states and had also applied for excise license for selling its products in the State of Haryana. Though defendant withdrew the said application thereafter, however, in the considered view of this court, such act on the part of defendants is sufficient to raise suspicion in the mind of plaintiff that the defendant may sell its product in State of Haryana for which the relief in the shape of quia timet suit is available under the law. Relevant portion of the judgment titled **Sanjeev Kumar Juneja's case (supra)**, is reproduced as under:

"21. The issue regarding maintainability of a composite suit alleging passing off and infringement of trade mark cropped up before Full Bench of Delhi High Court in **Carisberg Breweries A/S vs. Som Distilleries and Breweries Ltd., 2018 SCC Online Del 12912: AIR 2019 Del, 23 (FB)**. The Full Bench of Delhi High Court culled out the following two questions for adjudication:

- (a) Is the court compelled by anything in law to reject a plaint for mis-joinder, if two causes of action can not be clubbed;
- (b) Are the two causes of action, i.e. a claim for design infringement and the other for passing off, so disparate or dissimilar that the court cannot try them together in one suit;

22. In the present case, we are concerned with question (b).

23. Answering the issue, Five judges Bench of Delhi High Court observed as under:

46. It is evident that there is a similarity between the nature of inferences and conclusions that are presented to the court, in the two causes of action. Significantly, the complaint of passing off as well as that of design infringement emanate from the same fact: sale or offer for sale, by the defendant of the rival product. In this context, it is relevant to notice that the expression "cause of action" was explained in this incisive manner in **Kusum Ingots & Alloys vs Union of India, (2004) 6 SCC 254 : (2004) 120 Comp Cas 672** as under:

"every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action."

47. It is clear therefore, that the basic facts which impel a plaintiff to approach a court, complaining of design infringement are the same as in the case of passing off. In such circumstances, it is inconceivable that a cause of action can be "split" in some manner and presented in different suits. In this context, this court notes that whereas Order 2, Rule 3 enables plaintiffs to join disparate causes of action, Order 2, Rule 2 compels the whole claim to be clubbed together. Speaking on the effect of the latter (Order II Rule 2) the Supreme Court, noting its previous rulings, said in **Raptakos, Brett vs Ganesh Property, (1998) 7 SCC 184 : AIR 1998 SC 3085** is an authority for the proposition that a suit cannot be rejected as partly barred.

48. We are also of the opinion that a composite suit has the advantage of a bird's eye view by the court, with respect to a common set of facts: if for some reason, the claim for design infringement is prima facie weak and the plaintiff cannot secure interim relief, it does not have to face uncertainty of

another action before another court; the same court can review the same facts and evidence, and conclude pendente-lite, if prima facie passing off is made out, necessitating interim relief.

24. The Full Bench observed that in view of enabling provisions of Order II Rule 3 CPC, joinder of cause of action was permissible and the plaintiff was well within his right to maintain a composite suit joining two different cause of actions for infringement and that for passing off.

24.1. The issue w.r.t. splitting of different causes of action joined in a composite suit stands answered by the Code of Civil Procedure itself under Order II Rule 6 as under:

“6. Power of Court to order separate trials- Where it appears to the Court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient in the interests of justice.”

20. Now so far as application under Order 7 Rule 11 CPC is concerned, it has been argued by the learned counsel for defendant that since registered trademark CASHMERE is not in use since 2015 and the defendant has also filed rectification application with Trademark Registry for its non-use, therefore no ground for infringement and passing off is made out in this case. However, this submission again merits rejection, because in **M/s Gujarat Bottling Co. Ltd. & Ors vs The Coca Cola Co. & Ors (1995) 5, SCC 545**, it has been held that the registered Proprietor has statutory right to sue for infringement of trademark irrespective of whether or not the mark is used. The relevant portion of the said judgment is reproduced as under:

11. The first enactment whereby the machinery for registration and statutory protection of trade marks was introduced in this country was the Trade Marks Act, 1940. Prior to the said enactment the law relating to trade marks in

India was based on common law which was substantially the same as was applied in England before the passing of the Trade Marks Registration Act, 1875. At common law the right to property in a trade mark was in the nature of monopoly enabling the holder of the said right to restrain other person from using the mark. For being capable of being the subject matter of property a trade marks had to be distinctive. This right was an adjunct of the goodwill of a business and was incapable of separate existence dissociated from that goodwill. The Trade Marks Act, 1940, which was based on the Trade Marks Act, 1938 of U.K., has now been replaced by the Act. The Act has modified the law relating to Trade and Merchandise Marks and is a comprehensive piece of legislation dealing with the registration and protection of trade marks and criminal offences relating to trade marks and other markings in merchandise. Under the Act registration of trade marks is not compulsory and as regards unregistered trade marks, some aspects are governed by the Act while others are still based on common law. In respect of a trade mark registered under the provisions of the Act certain statutory rights have been conferred on the registered proprietor which enable him to sue for the infringement of the trade mark irrespective of whether or not mark is used.

21. Further in **OXYGUN Health Private Ltd. vs. Pneumo Care Health Pvt. Ltd. & others** MANU/DE/3459/2025, the Hon'ble Supreme Court of India has held as under:

21.3. Besides, we may also note that, in the Trade Marks Act, there is no provision which dis-entitles the proprietor of a registered trade mark from seeking relief against infringement, which is a right sanctified by Section 28(1)10 of the Trade Marks Act, on the ground that the mark has not been used, or substantially used by the proprietor of the registration. Section 28(1) does not make the right to seek relief against infringement dependent on user of the mark. In *Midas Hygiene Industries (P) Ltd v Sudhir Bhatia* MANU/SC/0186/2004: (2004) 3 SCC 90, the Supreme Court held that it was "well settled" that "in cases of infringement of trade mark or copyright, normally an injunction must follow". "Infringement", as defined in Section 29 of the Trade Marks Act, solely requires the allegedly infringed mark to be registered, not used. The limits on the effect of a registered trade mark are contained in Section 30, and non-user of the mark is not one of the circumstances envisaged in

that Section either. In Renaissance Hotel Holdings Inc. v B. Vijaya Sai MANU/SC/0066/2022 2022:INSC:70: (2022)! SCC 1, the Supreme Court held thus, after referring to earlier decisions on the point:

"52. It could thus be seen that this Court again reiterated that the question to be asked in an infringement action is as to whether the defendant is using a mark which is same as, or which is a colourable imitation of the plaintiff's registered trade mark. It has further been held that though the get-up of the defendant's goods may be so different from the plaintiff's goods and the prices may also be so different that there would be no probability of deception of the public, nevertheless even in such cases i.e. in an infringement action, an injunction would be issued as soon as it is proved that the defendant is improperly using the plaintiff's mark."

Despite the reliance on the judgment in Veerumal, therefore, it remains doubtful an, in the case of infringement of a trade mark of which the whether the Court can, registration is subsisting and valid, enter into the issue of commercial use of the mark while examining a plea of infringement.

21.4. Non-use, moreover, is envisaged, in Section 47(1)¹¹ of the Trade Marks Act, as a ground on which, on application, the mark can be taken off the register of trade marks. Once the Trade Marks Act, as the governing statute, envisages a statutory consequence of non-use, we have our doubts as to whether any other consequence of non-use can be fashioned by judicial fiat. The only consequence of non-use, envisaged in the Trade Marks Act, is removal of the mark from the register of Trade Marks. That, again, cannot be a suo motu exercise by the Registrar of Trade Marks, but has to be on an application made by an aggrieved person. It goes without saying that, if such an application were to be made, the mark would not be removed from the register without the proprietor of the mark being given a prior opportunity of hearing. Pending culmination of this exercise, the mark would continue to remain a validly registered mark, and would be entitled, in view of Section 28(1) as well as the law laid down by the Supreme Court in, inter alia, Midas Hygiene and Renaissance Hotel. Veerumal, we may observe, does not notice Section 47.

21.5. Squatting on a trade mark, after getting it registered, without using it, is, no doubt, unwholesome and to be deprecated. The sequela must, however, be those which the statutory envisages. It would be open to any party, including one who desires to use an identical mark, to apply to the Registrar of Trade Marks for invalidation of the mark on the ground of non-user, under Section 47. Once it is invalidated, and removed from the register, he is free to use the mark, or any mark similar thereto. Without having the mark removed from the register, however, we are clear in our mind that no one can infringe the mark and, thereafter, plead, as a defence to infringement, that the mark had "died" by non-user. The Trade Marks Act, plainly, does not envisage any such automatic death of a registered trade mark.

22. Now so far as single suit for combined causes of action in respect of infringement and passing off is concerned, in **Sanjeev Kumar Juneja's case (supra)**, it has been held that such suit is maintainable.

23. Further, in **Ramesh B. Desai's case referred above**, it has been held that application under Order 7 Rule 11 CPC is to be decided on demurrer and the provision applies in those cases only where statement made by plaintiff in the plaint without any doubt or dispute show that the suit is barred by any law in force.

24. Further, in **Central Bank of India's case (supra)**, it has been held as under:

24. Even if we would have been persuaded to take the view that the third relief is barred by Section 17(3) of the SARFAESI Act, still the plaint must survive because there cannot be a partial rejection of the plaint Under Order VII, Rule 11 of the Code of Civil Procedure. Hence, even if one relief survives, the plaint cannot be rejected Under Order VII, Rule 11 of the Code of Civil Procedure. In the case on hand, the first and second reliefs as prayed for are clearly not barred by Section 34 of the SARFAESI ACT and are within the civil court's jurisdiction. Hence, the plaint

cannot be rejected Under Order VII Rule 11 of the Code of Civil Procedure.

25. If the civil court is of the view that one relief (say relief A) is not barred by law but is of the view that Relief B is barred by law, the civil court must not make any observations to the effect that relief B is barred by law and must leave that issue undecided in an Order VII, Rule 11 application. This is because if the civil court cannot reject a plaint partially, then by the same logic, it ought not to make any adverse observations against relief B.

25. In view of above discussion, both the applications under Order 7 Rule 10 CPC and under Order 7 Rule 11 CPC are dismissed. Let the papers be tagged with main file.

Announced.
29.05.2026.

(Ajay Kumar Sharda)
District Judge, Karnal.
(HR0061).

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