
(2014) 09 BOM CK 0038

In the Bombay High Court

Case No : Notice of Motion (L) No. 1123 of 2014 in Suit No. 463 of 2014

Brihan Karan Sugar Syndicate Private Limited

APPELLANT

Vs

South Konkan Distilleries

RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Trade Marks Act, 1999 — Section 17(2)(b), 28(3), 29, 29(1), 29(2)(c)

Citation : (2014) 5 BomCR 706

Hon'ble Judges : G.S. Patel, J

Bench : Single Bench

Advocate : V.V. Tulzapurkar, Senior Counsel, Hiren Kamod and Akshata Kamath i/b W.S. Kane and Co, Advocate for the Appellant; K.G. Munshi, Damodar Desai and Gaurav Singh i/b Little and Co, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

G.S. Patel, J.—The Plaintiff and the Defendant both manufacture and sell country liquor. The suit is an action in trade mark infringement combined with a cause of action in passing off. On 9th May 2014, the Plaintiff sought and obtained leave under Clause XIV of the Letters Patent to combine the two causes of action in this suit.

2. The Plaintiff claims to have a registered trade mark "TANGO PUNCH" under registration no.1051107 in Class 33, of which the word TANGO is said to be an essential, leading and memorable feature. This word is used by the Plaintiff with or without a device of a raised palm with the first three fingers held upright. This mark TANGO and the three-finger device are embossed on the Plaintiff's glass bottles. The Notice of Motion seeks interim injunctive relief for, according to the Plaintiff, the Defendant has been found to be vending its own distillations in the Plaintiff's embossed bottles.

3. The principal defences, in brief, are that this usage is an honest industrial practice within the meaning of Section 30(1)(a) of the Trade Marks Act, 1999;

secondly, that the Plaintiff is the registered proprietor not of TANGO as a trade mark but of TANGO PUNCH; and that, in any event, the use is a mistake, not an adoption, and there is, therefore, no infringement. For the reasons that follow, I have held for the Plaintiff and granted the injunctions sought.

4. The Plaintiff claims that in 2001, its predecessor, Brihan- Maharashtra Sugar Syndicate Ltd. ("BMSSL"), adopted a composite trade mark label "TANGO PUNCH", in devnagiri script, in respect of its orange- or lime-flavoured country liquor, with a view to distinguish its goods from those of others in the market. TANGO is claimed to have been a leading, essential and memorable feature of this trade mark label. BMSSL obtained registration for TANGO PUNCH under registration number 1051107 in Class 33. By a deed of assignment dated 9th June 2008, BMSSL assigned this trade mark and its associated goodwill to the Plaintiff. On 4th December 2008, the Registrar of Trade marks accepted the Plaintiff's application to have its name entered on the register of trade marks as the proprietor. The relevant documents are annexed to the plaint. The use of the trade mark (by the Plaintiff and, before the assignment, by BMSSL) is open, extensive and continuous. The Plaintiff has popularised its products and spent considerable amounts promoting them. Sales and expenses figures certified by a Chartered Accountant are annexed to the plaint. For the years 2013- 14 alone, the Plaintiff's sales are nearly Rs.300 crores, and its expenses about Rs.2.5 crores.

5. The Plaintiff claims that in 2011 it decided to emboss its trade mark containing the word TANGO on glass bottles either on its own or in conjunction with the palm-and-three-finger device so as to distinguish its products from those of others. This embossing was on the front and rear of the Plaintiff's glass bottles. Since that time, the Plaintiff has sold its products in such bottles. The trade mark registration and the considerable reputation and goodwill have resulted in the Plaintiff acquiring statutory and common law rights to the exclusive use of the trade mark label and the word mark TANGO, said to be an essential, leading and memorable feature or part of its registered trade mark. The Plaintiff claims it diligently safeguarded its rights and initiated legal action where necessary.

6. The Plaintiff claims that in the fourth week of April 2014, it learned that the Defendant was manufacturing, distributing and selling country liquor with the label "DESHI DARU MANORANJAN SANTRA" in bottles embossed with the Plaintiff's TANGO in devnagiri script (with or without the three- finger device). According to the Plaintiff, the Defendant procured the Plaintiff's embossed bottles from secondary markets. This, the Plaintiff says, is detrimental to the distinctive character and reputation of the Plaintiff's trade mark. It also confuses and deceives consumers (of whom, apparently, there is no shortage) as to the provenance of the liquor. The Defendant could not have been unaware of the Plaintiff's products or reputation: the Plaintiff's products are sold across Maharashtra. The illicit use of the Plaintiff's embossed bottles is a deliberate attempt to pass off the Defendant's products as those of the Plaintiff's. This is

the passing off and infringement of which the Plaintiff complains.

7. Several affidavits in reply and rejoinder have been filed. The Defendant's contentions, in summary, are that it is a well- established and bona fide industrial practice to reuse empty bottles. Care is usually taken to segregate and remove embossed bottles. But mistakes happen. The Defendant's use is unintentional. It had no design to pass off its products as those of the Plaintiffs. In addition, the Defendant contends:

(a) The Plaintiff is not the proprietor of the trade mark TANGO at all. It has rights only in respect of the label TANGO PUNCH.

(b) A search report, annexed as Exhibit 1 to the Affidavit in Reply, shows that TANGO has been registered in the name of United Spirits and therefore the Plaintiff cannot claim to have exclusive use of this mark.

(c) It is a common and bona fide trade practice of country liquor manufacturers to reuse bottles in order to cut costs. Certain manufacturers use embossed bottles to sell a little extra quantity of liquor. The Plaintiff itself follows this practice. There is, therefore, no question of passing off.

(d) DD Santra, Pahli Dhar Santra, Our Choice super whiskey and Pakki Dhar Santra have been sold in bottles embossed with TANGO with or without the device. This cross-use is also true of Indian-made Foreign Liquor (IMFL). The rum brand OLD MONK, manufactured and marketed by Mohan Meakins Limited, is also found sold in bottles embossed with the words BHINGRI and UGAR SUGAR.

(e) The liquor-consuming public recognizes and goes by not the embossing but the brand on the label as approved by the Commissioner of State Excise. Therefore, reusing embossed bottles is entirely insignificant and irrelevant. The Defendant has been using a mark MANORANJAN SANTRA since the 1970s and has now sufficient reputation, goodwill and capacity to distinguish itself by its label no matter in what bottles its product is sold; and

8. I have heard Dr. Tulzapurkar, learned Senior Counsel for the Plaintiff, and Mr. Munshi, learned Counsel for the Defendant, at some length. With their assistance, I have gone through the record and considered carefully the material before me.

A. As To Registration And Proprietorship

9. Mr. Munshi submits that what is registered to the Plaintiff is the trade mark label TANGO PUNCH (in devnagiri script), not the mark TANGO that is embossed on its bottles and to which it claims exclusive rights. Dr. Tulzapurkar's response to this is that the Plaintiff has proprietary rights in TANGO as this is a leading, essential and memorable feature of its mark. The continuous use of this mark had led to TANGO being associated exclusively with the Plaintiff's products and no one else's.

10. Section 17(2)(b) of the Trade Marks Act, 1999 reads:

Sn.17 Effect of registration of parts of a mark

(1) When a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken as a whole.

(2) Notwithstanding anything contained in sub- section (1), when a trade mark -

(a) contains any part-

(i) which is not the subject of a separate application by the proprietor for registration as a trade mark; or

(ii) which is not separately registered by the proprietor as a trade mark; or

(b) contains any matter which is common to the trade or is otherwise of a non-distinctive character,

the registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered.

(Emphasis supplied)

11. In other words, registration of a trade mark confers exclusive rights to the use of the trade mark taken as a whole, and not separately to its constituent components or parts, if any. It is obvious that any part containing a matter common to trade or otherwise of a non-distinctive character will not be registered so as to grant a monopoly. Though the Registrar may not require any "disclaimer" as under the old Act, he is empowered to impose suitable conditions or limitations while accepting the application for registration of a trade mark. When a trade mark contains a device common to trade or is otherwise of a non-distinctive character, the law leaves no doubt that the registration does not confer any exclusive right in the matter forming only a part of the trade mark. 1

12. The Plaintiff's trade mark registration is annexed to the plaint. The registration certificate shows a condition and limitation clause:

"Registration of this Trade Mark shall give no right to the exclusive use of the device of orange and all other descriptive matters appearing on the label."

13. What is disclaimed is the device of the orange slice, not the word TANGO. It is hard to see how that word, undoubtedly an inseverable part of the Plaintiff's registered mark, one without which the integrity of the Plaintiff's mark would be lost, can be said to have been disclaimed or to have been "'descriptive '". If it is to be argued that the word TANGO is descriptive of the Plaintiff's products "'lime or orange flavour, then I believe that to be too far extended. A tango is, in common usage, the Latin American ballroom dance in 2/4 or 4/4 time. The word ?tang? connotes piquancy in flavour or taste, a distinctively sharp flavour, taste or odour, frequently used in conjunction with citrus fruits. But in assessing the use of these words, we must be mindful of the consumers for whom these products are intended. It seems to me highly unlikely that the parties "'consumer base would ever make the somewhat nuanced or refined linguistic

associations in English of this disassembled word tang. That word's etymology is from Middle English, derived from a Scandinavian root. To extrapolate such an association to what is nothing but a distinctive localisation in Maharashtra and South Konkan is I think entirely incorrect. Once some particular material has been disclaimed or has a condition attached to it in the registration, the other parts must be taken to be without such limitation. 2 The word TANGO is, thus, not a descriptive part of the trade mark TANGO PUNCH, or of such a non-distinctive character as to fall within Section 17(2)(b) of the Act.

B. Registration By United Spirits

14. The Defendant claims that the trade mark TANGO is registered to United Spirits under No. 881975 in Class 33. The Plaintiff denies this. That registration has not been renewed after 15th October 2009. It is no longer a valid registration. It is not in force. On the date of its application, United Spirits had not used this trade mark. When the Plaintiff began embossing its bottles, it was the only manufacturer to do so.

15. In any case, the fact that parties A and B have competing registrations does not mean that A cannot proceed against C. The two registrants acquire no rights vis-?-vis each other, but each has every right against a third party infringer. This is abundantly clear from Section 28(3) of the Act:

Sn. 28. Rights conferred by registration

(1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

(2) The exclusive right to the use of a trade mark given under sub-section (1) shall be subject to any conditions and limitations to which the registration is subject.

(3) Where two or more persons are registered proprietors of trade marks, which are identical with or nearly resemble each other, the exclusive right to the use of any of those trade marks shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by any one of those persons as against any other of those persons merely by registration of the trade marks but each of those persons has otherwise the same rights as against other persons (not being registered users using by way of permitted use) as he would have if he were the sole registered proprietor.

(Emphasis supplied)

16. United Spirits "" so-called registration furnishes no defence to the present Defendant.

C. Common Trade Practice

17. This is the mainstay of the Defendant's case, one on which Mr. Munshi mounted a so to speak stout and spirited defence. The Defendant claims that this cross-pollination of glass bottles, with every manufacturer re-using every other manufacturer's bottles, is a bona fide and well-established trade or industrial practice. This submission is based on Section 30(1) of the Act:

Sn. 30 Limits on effect of registered trade mark

(1) Nothing in section 29 shall be construed as preventing the use of a registered trade mark by any person for the purposes of identifying goods or services as those of the proprietor provided the use-

(a) is in accordance with honest practices in industrial or commercial matters, and

(b) is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trade mark.

18. The Defendant is careful to weed out embossed bottles; yet there is always human error, and mistakes will happen. This does not mean, Mr. Munshi says, that there is either infringement or passing off.

19. There is, as Dr. Tulzapurkar points out, a self-defeating contradiction in this argument. If there is such a weeding out, then there can be no honest or bona fide industrial practice in the first place. Countering this, Mr. Munshi draws attention to an affidavit of one Sheetal S. This somewhat mysteriously-named person claims to have as her business the purchase of empty bottles, both plain and embossed. These, she says, are sold to various country liquor manufacturers in Maharashtra. No one insists on a particular kind of bottle. Assortments of bottles are so sold. Now if this is to be evidence of an industrial practice, then I do not see how it can sit well with the claim of weeding out and sorting.

20. There is, Dr. Tulzapurkar submits, no such industrial practice; at least not one that is honest or bona fide, and there is no evidence of it. Indeed, there is material to the contrary: On 25th February 2014, the Sanjivani Sahakari Sakhar Karkhana Ltd issued notice to the Karmaveer Shankarrao Kale Sahakari Sakhar Karkhana Ltd. threatening legal action on account of the latter's reuse of the former's embossed bottles with the mark BOBBY, also for country liquor. Any such industrial practice must, Dr. Tulzapurkar submits, and in my view rightly, by definition be industry-wide. The fact that there is illicit use by some does not make a practice, an industrial practice and certainly not an honest or bona fide practice of any kind.

21. The facts in SABMiller India Limited Vs. Som Distilleries and Breweries Ltd., were, Dr. Tulzapurkar submits, similar to those at hand. The defendant in that case sought to rely on the provisions of Section 30(1) of the Trade Marks Act, 1999 stating that it could use the registered trade mark in accordance with honest industrial or commercial practices. The defendant, Som Distilleries, was

using the plaintiff's beer bottles embossed with its trade mark. The bottles were also of a registered design. Mr. Justice Kathawalla held, in paragraph 26 of his judgment, that Section 30(1):

"... protects the use of a registered trade mark in comparative advertisement i.e. when the Defendant uses the Plaintiff's registered trade mark to indicate the Plaintiff's goods and not as the Defendant's goods, but to show the difference between the goods of the Plaintiff and the goods of the Defendant..."

22. In appeal, 4 our Division Bench held that the defence of an honest practice is contrary to the case of the appellant (the original defendant) taking every precaution. It was inconceivable that some bottles with the original plaintiff's mark could have then "sneaked into" the production process. A case of an honest practice in industrial or commercial matters must be both pleaded and prima facie established. Where the ingredients of Section 29(1) are made out, an illicit use by one who is not a registered proprietor or entitled to permissive use, is such as to render the use of the mark likely to be taken as being used as a trade mark. 5 It is clear, as Dr. Tulzapurkar submits, that any such practice of using bottles embossed with another's trade mark is per se dishonest within the meaning of Section 29 of the Act.

23. Mr. Munshi's answer to this is that there is now ample material before the Court to show that the Plaintiff's TANGO- embossed bottles (with or without the three-finger device) are being used by other manufacturers and vice-versa. SABMiller has no application, argues Mr. Munshi, for the defendant there did not claim any such honest industrial practice, and this is clear from paragraph 26 of Mr. Justice Kathawalla's judgment, the very passage that Dr. Tulzapurkar cited:

"... Again, it is not even the Defendant's case that there is any practice in industrial or commercial matters to use other manufacturers' bottles bearing their marks. The only allegation made in the affidavit-in-reply is that there is practice of using one's old bottles. As regards the use of someone else's bottles with that person's trade mark, the Defendant has admitted that it has used the Plaintiff's bottle "inadvertently" and there is a possibility of human error in using somebody else's bottles for one's product..."

24. I do not see how this assists Mr. Munshi. Dr. Tulzapurkar relied on Mr. Justice Kathawalla's SABMiller decision not only for a factual proximity but more importantly for its pronouncement as the legislative intent of Section 30. That is a finding with which I am in entire agreement. I see no reason to depart from that view, even assuming that any such departure was possible.

25. Dr. Tulzapurkar's reliance on the decision in Skol Breweries Ltd v. Fortune Alcobrew Pvt. Ltd. is entirely appropriate. 6 There, the defendant adopted the mark "50000" in respect of beer, one that the plaintiff said constituted infringement and passing off of its registered trade mark "Haywards 5000". The defendant contended that the usage of units of thousand, i.e., numbers in which all but the first numeral are zeros, was "common to the trade", and the

defendant's use was bona fide and in accordance with honest practices in the trade; and thus protected u/s 30(1) of the 1999 Act. Holding that restrictions and qualifications in the proviso to Section 30(1) and in Section 29(8) relate only to the opening part of Section 30(1) and not to infringement in general, Mr. Justice Vazifdar held that Section 30(1) entitles a person to use a registered mark of another for the purpose of identifying the goods or services of such registered proprietor and not for the purpose of identifying his goods or services. Comparative advertising is covered by Section 30(1), but the section is not limited to that use alone. The purpose of comparative advertising is, in fact, to indicate to the public that the advertisers "" goods sold under his mark do not originate from his competitor and vice-versa. It is not used by a person to pass off a competitor's mark as his own, or to mis-identify his goods as originating from the mark's proprietor. The section includes the use by any person of the mark of another in any other manner or for any other purpose so long as it is for the purpose of identifying the goods or services as those of the proprietor of the mark and such use is not contrary to section 29(8) and the proviso to section 30. The use of the mark in this manner maintains the trade connection between registered mark of the proprietor thereof and the goods and services sold and offered by him under the mark. Similarly, a retailer is entitled, in accordance with honest trade practices, to use a mark to identify the goods in which he deals as those of the registered proprietor. In so doing, he conveys to the public that it is the registered proprietor who is the source of the products, and the retailer deals with them only in that capacity.

26. It therefore is of no moment that the Defendant in this case makes no claim to be identified by the Plaintiff's trade mark, and only claims an honest industrial practice of reusing bottles. What is of consequence is that the Defendant does not sufficiently distance itself from the Plaintiff's mark. It uses the Plaintiff's bottles, embossed with the Plaintiff's marks, for its own products. This does not meet the Skol Breweries test. What matters for our purposes is the message on the bottle.

27. From the two SABMiller decisions and the decision in Skol Breweries it follows that when such a defence is taken there must be, at a minimum: (1) compelling evidence, at least prima facie, of such an honest and bona fide industrial, commercial or trade practice; and (2) no inconsistency in the stands taken in defence. On both these counts, the Defendants must be held to have failed.

D. The Plaintiff Also Follows This Trade Practice; Others Are Also Offenders

28. Mr. Munshi then canvasses the proposition that the Plaintiff cannot be heard to complain since it is itself an offender. Its products, like ASLI SAUF, are sold in bottles embossed with the marks of others: "GOLDEN VATS TN", "ELITE DISTILLERIES" and "BHINGRI". To support this, he draws attention to photographs of such bottles and use. Dr. Tulzapurkar is quick to put paid to this submission. These bottles are not those of the Plaintiff but are manufactured by Kolhapur Sugar Mills. The Plaintiff will take the necessary action. He also says

that despite several requests, the Defendant has not provided copies of cash memos or explained how it came upon these allegedly infringing products. Mr. Munshi then says that other bottles have been found with the mark TANGO PUNCH on them, but with products manufactured by Navytad Distilleries Pvt. Ltd. This is, as Dr. Tulzapurkar says, no answer at all. The fact that there are multiple offenders does not excuse any one of them. In any case, the Plaintiff is investigating the illicit use by Navytad.

29. As to the use by other manufacturers such as Deokars Distillery which is said to use the Plaintiff's embossed bottles for DESHI DARU DD SANTRA, the Plaintiff has already taken action. It sent a cease and desist on 6th June 2014, and Deokar's Distillery responded on 12th June 2014 saying that the use was inadvertent and promising to stop future misuse. Another cease and desist notice was sent to Sri Venkateshwara Distilleries. Similarly, in respect of Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana's DESHI DARU PEHLI DHAR SANTRA, also said to be found in the Plaintiff's embossed bottles, the Plaintiff has filed Suit (L) No. 480 of 2014, a motion for injunction and obtained orders.

E. Consumers Identify The Product By The Label Not The Embossing

30. The Defendant says it has used its mark, MANORANJAN SANTRA, since the 1970s. It has acquired a significant reputation and much goodwill itself. Consumers do not identify their libation of choice by embossing, but by the unique labels, whatever be the bottle and whether or not it is embossed.

31. This submission needs only to be stated to be rejected. If the embossed mark was unimportant, the Defendant should have no objection to agreeing to use only bottles without the Plaintiff's embossing, and would not so oppose this application, nor claim any honest industrial practice of reusing bottles, plain or embossed. That the embossing is not of the Defendant but is of the Plaintiff is plain. This submission provides no justification at all for the Defendant's continued use of bottles embossed with the Plaintiff's marks.

F. The Defendant's Use Does Not Constitute Infringement Or Passing Off

32. Mr. Munshi's submission is that to constitute infringement or passing off, the use by the alleged offender must be of the mark as a trade mark. The mere act of filling bottles is no infringement and therefore Section 29(1) of the 1999 Act has no application. The Defendant makes no claim to being the registered proprietor of TANGO. It does not identify itself or its goods with the Plaintiff's marks. It does not adopt the Plaintiff's marks as its own, nor does it intend so to do. These, he submits, are essential to constitute infringement or passing off.

33. He relies on the decision of Mr. Justice Plowman in *Autodrome*, 1969 RPC 564 and the distinction between the use of a word registered as a trade mark and its use as a trade mark. The Plaintiff in the present case has not established that the Defendant has used the Plaintiff's marks "in the trade mark sense, as trade marks". Since the Defendant claims no right to use the mark TANGO, there is no

use by it "as a trade mark" and therefore no infringement. I believe this is a misreading of Autodrome. All that the decision says is that it is not every use of a word that is prohibited by trade mark law. It is, for instance, no infringement to say that a couple danced the Tango. It is, however, quite another matter when the mark is used by another party, an infringer, on a container filled with the infringer's own product. That is a use in "the trade mark sense", and it is impermissible. The Autodrome case, as I read it, is actually against Mr. Munshi and in Dr. Tulzapurkar's favour. If, for instance, the Defendant used the Plaintiff's embossed bottles as flower vases or as decorative bases for table lamps there might conceivably be no infringement and certainly no passing off. What the Defendant does, on the other hand, is to put a competing product in a bottle that bears the Plaintiff's distinctive mark. It is not then, I think, open to the Defendant to claim that this use is not "as a trade mark" and that there is no infringement.

34. Section 30 of the Act must be read with Section 29(2)(c) and Section 29(3):

Sn. 29 Infringement of registered trade marks

(1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.

(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of-

(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or

(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or

(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark,

is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

(3) In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.

35. There can be no doubt that the use by the Defendant of the Plaintiff's embossed bottles but containing the Defendant's products falls squarely within Section 29(3) of the Act. That being so, the injunctions must follow.

36. There will thus be injunctions in the following terms against the Defendant,

viz., that pending the hearing and final disposal of the suit, the Defendant (by itself or through any of its agencies, proprietors, directors, partners, agents, stockists, distributors or dealers) is restrained by an order and temporary injunction from:

(a) infringing the Plaintiff's registered trade mark under registration No. 1051107 in Class 33 by using bottles embossed with the trade mark "TANGO" whether with or without a device of a raised palm with three upright fingers or by the use of the trade mark "TANGO" or any other trade mark deceptively similar to the Plaintiff's registered trade mark upon or in relation to country liquor or similar goods;

(b) manufacturing, bottling, marketing, selling, exhibiting for sale, distributing, possessing, advertising, trading or otherwise dealing in country liquor or similar goods packed in bottles embossed with the impugned trade mark "TANGO" with or without a device of a raised palm with three upright fingers or by using any other trade mark identical with or deceptively similar to the Plaintiff's trade mark "TANGO" so as to pass off, or to enable others to pass off, the Defendant's goods as and for those of the Plaintiff.

37. The Notice of Motion is disposed of in these terms. There will be no order as to costs.

1See: Venkateswaran, Trade Marks and Passing-Off, 5th Ed., 2010, Vol. 1, pp. 650, 651, 653

2 Shaw Wallace and Company Ltd. and Another Vs. Mohan Rocky Spring Water Breweries Ltd.,

4 Som Distilleries and Breweries Ltd. Vs. SABMiller India Ltd., per Dr. Chandrachud and Gupte, JJ.

5A SLP from this order was dismissed on 2nd December 2013.

6 Skol Breweries Limited Vs. Fortune Alcobrew Pvt. Limited, Hindustan Breweries and Bottling Limited and Shaw Wallace and Co. Limited, per Vazifdar, J.