

(2020) 11 DEL CK 0203

In the Delhi High Court

Case No : Miscellaneous Application No. 6865 Of 2020 In Civil Suit (COMM) No. 319 Of 2020

RB Health (US) LIC And Anr

APPELLANT

Vs

Dabur India Ltd

RESPONDENT

Date of Decision : 27-11-2020

Acts Referred:

Design Act, 2000 — Section 4(a), 4(b), 4(c), 6, 6(4), 6(4)(b), 19, 19(1)(a), 19(1)(b), 19(1)(c), 22, 22(3), 44
Trade Marks Act, 1999 — Section 17

Citation : (2020) 11 DEL CK 0203

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Chander M. Lall, Jawahar Lai, Nancy Roy, Hemant Singh, Mamta Jha, Manish Kumar Mishra, Akansha Singh

Judgement

'''

Rajiv Shakdher, J",'''

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Preface: -, , , ,

1. The plaintiffs before me are seeking an injunction against the defendant from manufacturing, importing, marketing, advertising, promoting, selling", , ,

and/or using plaintiff no. 1/RB Health (US) LLC's registered design i.e. design no. 271671, falling in class 28-02, in relation to a soap bar", , ,

[hereafter referred to as the "subject design registration"]. , , ,

1.1. There is the usual extrapolation of this prayer, which is, that an injunction is sought against the defendant in making use of any other design that", , ,

combines RB Health (US) LLC's registered design in connection with the aforementioned activities. , , ,

1.2. Besides this, the plaintiffs also seek an injunction against the use of their tagline "be 100 % sure" and/or qua the trade dress/packaging as", , ,

also the colour of the soap bar manufactured and/or sold by the defendant. , , ,

1.3. Along with the aforementioned reliefs, consequential reliefs for surrendering offending material, such as advertising leaflets, labels, pamphlets", , ,

etcetera and stock bearing the subject design registration, whether packed or unpacked, are also sought." , , ,

1.4. Before I proceed further, I may indicate that plaintiff no. 1/RB Health (US) LLC would, hereafter, be referred to as "RB (US)". Likewise", , ,

plaintiff no. 2/Reckitt Benckiser (India) Pvt. Ltd. would be referred to as "RB (India)" while the defendant/Dabur India Limited would be", , ,

referred to as "Dabur". Collectively, though, wherever the context requires, RB (US) and RB (India) will be referred to as plaintiffs." , , ,

2. These interim reliefs are sought in aid of the suit, in which, a panoply of final reliefs are sought such as permanent injunction, rendition of accounts", , ,

damages, as also the relief for delivering up the offending goods." , , ,

2.1. However, what is at the heart of the matter, at least at this stage, are two aspects." , , ,

i. First, as to whether or not Dabur has raised a credible challenge to the validity of the RB (US)'s registered design?", , ,

ii. Second, as to whether Dabur, in using the offending trade dress, which

includes the taglines, the colour of the packaging, the colour of the soap bar" ,,,
etcetera, has attempted to pass off the goods manufactured by it as those
originating from the plaintiffs's? stables, so to speak?" ,,,

Background facts: - ,,,

3. Before I deal with the legal nitty-gritties, the following broad facts need to be
noticed." ,,,

i. RB (US) and RB (India) claim to be part of a multi-national going by the name
Reckitt Benckiser PLC. It is averred that as a group they are into ,,,

manufacture and sale of health and hygiene products which are sold under well-
known brands such as "Dettol", "Harpic", "Lizol". ,,,

While RB (US) is a company registered under the laws of State of Delaware, USA
and, as indicated above, is the owner of the subject design" ,,,

registration, the authority to use the same, it is stated, has been vested in RB
(India)." ,,,

ii. It is claimed that RB (India) is also inter alia in the business of manufacturing
health care, home care and hygiene products. It is also averred that" ,,,

RB (India), amongst other products, manufactures Dettol soap bar." ,,,

iii. Although, there is a reference to several registered designs, there are two
sets of registrations which are relevant for the purpose of this case. The" ,,,

first set of registrations, which are relevant, are the design registrations for soap
bar bearing numbers 229435 and 229436 falling in class 28-02. These" ,,,

registrations, it is claimed, were obtained by the plaintiffs's? group company on
21.05.2010, having a reciprocity date of 23.11.2009. The second" ,,,

design registration, which is relevant, is the subject registration which was
obtained, as adverted to hereinabove, by RB (US) on 24.04.2015. The" ,,,

subject design registration [i.e. 271671] has a reciprocity date of 04.11.2014
and, as noticed above, falls in class 28-02." ,,,

4. Intermingled with these facts, are assertions by the plaintiffs, that the Dettol
antiseptic liquid was first marketed in United Kingdom in 1933. The" ,,,

attempt, perhaps, is to link the liquid soap with the soap bar. It is also asserted
that the sword device was adopted by the plaintiffs, insofar as India" ,,,

S. No., Design Registration Number, Class,

1., 233189, 28-02,

2., 233190, 28-02,

Name of entity,Design number,Registration date,Date of publication

Unilever,DM-012454,22.12.1988,28.02.1989

Unilever,DM/031/397,-,31.03.1995

HUL,233189,10.12.2010,27.01.2012

HUL,233190,10.12.2010,27.01.2012

subject design registration is a trade variant of the 2009 design.,,,

viii. The attempt made by the plaintiffs to explain away the charge levelled against them that the subject design registration is only a trade variant of,,,

the 2009 design by placing reliance on Section 6 of the Designs Act, must fail for the reason that the two designs are owned by separate juridical",,,

entities. In other words, since the proprietor/owner of the 2009 design and the subject design registration are not common, the saving provision, which",,,

is, subsection (4) of Section 6 of the Designs Act would not help the cause of the plaintiffs. Therefore, the logical corollary should be that the subject",,,

design registration is declared invalid on the ground of lack of novelty and/or originality when compared to the known design which, in this case, apart",,,

from other designs that are in public domain, is the 2009 design. [See: Whirlpool v. Videocon, 2014 (60) PTC 155 [Bom]; Videocon v. Whirlpool, 2012",,,

SCC OnLine Bom 1171 (DB); and Vodafone International Holdings BV v. Union of India &Anr., (2012) 6 SCC 613]",,,

ix. An interim injunction is not granted in a design infringement action if there is a credible challenge put forth with regard to its validity on the ground,,,

of lack of novelty. The subject design registration not being "substantially different" from earlier known designs, as is sought to be demonstrated",,,

by reference to other registered designs published both in India and abroad, the plaintiffs'prayer for interim injunction ought to be rejected. [See:",,,

Glaverbel S.A. vs. Dave Rose & Ors., 2010 SCC OnLine Del 308; Baldev Singh vs. Shriram Footwear, 1997 SCC OnLine Del 314; Sandeep Jaidka",,,

vs. Mukesh Mittal and Another, (2014) SCC OnLine Del 2970; and Bharat Balar & Another vs. Rajendra Distributors & Others, 2015-3-L.W. 292]",,,

Reply to the charge of passing off: -,,,

9. Passing off is an action in deceit. For the plaintiffs to succeed in such an action, it would have to establish a proprietary right in the impugned",,,

trademark. In this case, the plaintiffs have claimed that Dabur is guilty of

passing off on account of similarity in the colour that the two competing",,,
packagingâ??s bear, [which is, the colour green]; the colour of the soap bar
[which is orange in colour]; and the use of generic and descriptive",,,
phrases or taglines. None of these features can be made subject matter of
proprietary rights. There are only a limited number of colours available in,,,
the universe and, especially, in the sphere of soap bars which are promoted as
disinfectants.",,,

9.1. Likewise, the plaintiffs cannot, in law, claim proprietorship of generic or
descriptive trademarks and taglines as they are common to the trade as",,,
also the English language.,,,

9.2. Marks which are descriptive cannot be monopolised and, therefore, no
passing off action will lie against its use. [Marico Ltd. vs. Agro Tech, 2010",,,
SCC OnLine Del 3806],,,

9.3. Since the taglines or descriptive marks are not registered, therefore, no case
of infringement can be made out by the plaintiffs. The mere fact that",,,
the label is registered does not give rights in the descriptive marks. In this
behalf, reference was made to Section 17 of the Trade Marks Act, 1999 [in",,,
short â??Trade Marks Actâ??.],,,

9.4. An action for passing off would be maintainable only if the trademark used
by the defendant or the overall get-up and trade dress is similar to the,,,
plaintiffsâ?? trademark or trade dress. The deception, must lead to confusion
with regard to the origin of the goods. Thus, an allegation of passing off",,,
cannot be sustained where the defendantâ??s product can easily be
distinguished. The present matter is one such case.,,,

9.5. When the competing packaging and products are examined, it is clear that
the only similarity is in the usage of the background colour [which is",,,
green] in respect of packaging and the colour of the soap which is orange. Both
features are common to trade. The aforesaid is evident if one were to,,,
peruse the following illustrations.,,,

Extracts taken from pages 19 and 20 of the short reply affidavit filed by Dabur,,,

9.6. Dabur itself has been using the green colour for its packaging in respect of
soap bars manufactured and sold by it in the international market.,,,

Furthermore, the plaintiffs themselves have been using different colours for
packaging their Dettol-brand soap bars and, therefore, the claim of",,,

exclusivity qua the green-colour is flawed.,,,

9.7. The plaintiffs have failed to establish that the packaging used by them and the descriptive elements superimposed on it have acquired,,,

distinctiveness.,,,

9.8. Dabur's soap bar is distinguishable from that of the plaintiffs' soap bar. This is discernible by having regard to Dabur's packaging.,,,

The packaging used bears the Dabur brand prominently leaving no scope for confusion in the minds of an ordinary consumer having imperfect,,,

memory. [See: Kaviraj Pandit Durga Dutt vs. Navratna, AIR 1965 SC 980]" ,,,

9.9. The plaintiffs have failed to make out a prima facie for grant of injunction. Dabur has been in the business of manufacture and sale of soap bars,,,

in India since 2010. Dabur has attained, in a short time, a turnover of Rs. 6 crores on account of sales of 'Dabur Sanitize' soap bar and," ,,,

therefore, if injunction is granted, it would cause irreparable injury to its business interests." ,,,

Analysis and reasons: - ,,,

10. Having heard learned counsel for parties and perused the record, to my mind, what needs to be put, at the forefront, are two things. Firstly, a" ,,,

comparative chart of various design registrations. Secondly, the get-up/ packaging/trade dress of the competing products." ,,,

Extracts taken from pages 9 to 12 of the documents filed by the plaintiffs: - ,,,

11. The first table, which sets out prior publications of known designs, to my mind, prima facie establishes that there is a serious and credible challenge" ,,,

that the subject design registration is new or original. The principle feature of the subject design registration is the rounded corners and the two,,,

'dimples' on either side of the soap bars. The prior designs which were published by Unilever on 28.02.1989 and 31.01.1995 are similar to the,,,

subject design registration [as is apparent to an instructed eye]. The main features of the soap bars i.e. rounded corners and dimpled sides are,,,

apparent in both the subject design registration as also the aforementioned prior publications.,,,

11.1. The prior publications concerning Unilever soap bar made on 28.02.1989 and 31.01.1995, thus, provide significant heft to Dabur's claim that" ,,,

the subject design registration is not validly registered if one were to bear in mind the provisions of Section 19(1)(b) and (c) read with Section 4(a), (b)," ,,,

(c) of the Designs Act.,,,

11.2. The argument advanced on behalf of the plaintiffs that the WIPO search report does not disclose the date of publication is, on the face of it,",,

incorrect.,,,

11.3. Document - 2 filed with Dabur's short-affidavit-in-reply, which is, the extract from WIPO search report adverts to the date of the,",,

publication.,,,

11.4. The submission of Mr. Lall that registrations of the known and similar designs made outside the country would not ipso facto lead to cancellation,,,

of designs registered in India under Section 19(1)(a) of the Designs Act unless such designs are registered in India as per the statutory protocol,,,

provided, in that behalf, is correct.",,,

11.5. That being said, a design which is registered abroad can be protected, in India, provided an application for that purpose is made with the,",,

concerned authorities in India within a period of six (6) months from the date when the protection is sought qua the design in the United Kingdom or,,,

other convention countries or group of countries which are members of inter-governmental organisation. The applicant can be either the person who,,,

initially applied for protection of the design either alone or jointly with any other person. In such an eventuality, the applicant would be entitled to claim" ,,,

that the registration under the Designs Act is prior to other applicants and shall, thus, have the same priority date as the date of the application where it" ,,,

was first preferred [i.e. the country which falls within the ambit of Section 44].,,,

12. However, insofar as prior publication is concerned, it should [if it is a design on paper] depict the shape or other features of the article which are" ,,,

clear to the eye.,,,

12.1. The ocular impression should be the same as one would experience of the design-in-issue if it were to be applied to a physical object. If such a,,,

situation obtains, as it does, in this case, in my view, then, it would fall within the purview of Section 4(b) of the Designs Act." ,,,

12.2. In other words, the prior publication [in this case of Unilever] would fulfil the indicia of being in a tangible form or use prior to the date of" ,,,

filing. In the instant case, as noticed above, the Unilever designs were published on 28.02.1989 and 31.01.1995. These designs give the same visual" ,,,

impression which one would obtain when applied to the concerned article i.e. a soap bar. [See: Reckitt Benkiser India Ltd. vs. Wyeth Ltd., 2013 SCC",,, OnLine Del 1096],,,

13. Therefore, the argument advanced by Mr. Lall that the extracts from the WIPO search do not come within the scope of Section 4(b) of the",,,

Designs Act is untenable and, hence, rejected. The said provision, when read with Section 19(1)(b), and juxtaposed with the circumstances brought to",,,

fore in this case, at least at this stage, presents a credible challenge to the validity of the subject design registration.",,,

14. At this juncture, I may also indicate that on behalf of Dabur, Mr. Singh had submitted that the assertions made in paragraph 32 of the plaint would",,,

without more, establish that the subject design registration is neither new nor novel. The relevant extract from paragraph 32 of the plaint is set forth",,,

hereafter.,,,

â??32. On the aspect of shape comparison, it is submitted that for purposes of passing off, the test is of an ordinary and unwary customer",,,

with imperfect recollection, i.e. the test is of a man who may have seen the Plaintiffâ??s product at one given point of time and has a faint",,,

recollection of the former. To such a person, the Defendantâ??s soap would be considered deceptively and confusingly similar to",,,

Plaintiffâ??s 2010 shape as well as the 2015 shape. An unwary customer would largely be attracted by the overall outer shape of the two",,,

products with the unusual dimple/dip on both sides. It is submitted that none of the other soaps have this feature. Most soaps available in",,,

the market are either rectangular or rectangular with round/oval edges. None of the leading soaps in the market have the unique dimple/dip",,,

on both sides.â??,,,

[Emphasis is mine],,,

14.1. Mr. Lall, when confronted with this assertion in the plaint, sought refuge in the provisions of Section 6(4)(b) of the Designs Act. Based on the",,,

said provision, Mr. Lall argued that the Designs Act permits similar designs to be registered by the same proprietor. It was contended that the",,,

similarity of the subject design registration with the 2009 design would not invalidate the former.,,,

15. In my view, this argument would hold well if the proprietor of the subject

design registration and the 2009 design were the same person/entity. The",,,, proprietor of the subject design registration is RB (US) while the proprietor of 2009 design is Reckitt Benckiser (Overseas) Health Limited.,,,,

15.1. A design is a tangible asset, which, in law, can have only one proprietor as, in law, like any other asset, it would bear a value. None of the",,,,

judgements cited by Mr. Lall rail against this proposition. The argument that the two designs are owned by a group of concerns which fall under the",,,,

same corporate umbrella is not good enough to fall within the framework of Section 6(4)(b) of the designs Act.,,,,

16. Therefore, to my mind, this aspect as well presents a credible challenge insofar as the plaintiffs seek to invoke their statutory rights under the",,,,

Designs Act qua the subject design registration.,,,,

Passing off: -,,,,

17. Passing off is a tortious action for deceit. For such an action to succeed, it must have, in the very least, the following three indiciaâ??s, commonly",,,,

known as the â??classical trinityâ??. The said markers are articulated in what is commonly known as the Jiff Lemon case [Reckitt & Colman,,,

Products Ltd. vs. Borden Inc., [1990] 1 All E.R. 873] and can, broadly, be paraphrased in the manner set forth hereafter.",,,,

i. First, the plaintiff must be able to establish that it has the necessary goodwill and reputation in the goods sold or services offered to the consumers at",,,,

large which in turn should be interlinked with the get-up in which they are proffered.,,,,

ii. Second, the plaintiff must be able to demonstrate that the defendantâ??s misrepresentation qua the goods or services offered by him have led",,,,

consumers to believe that they originate from the plaintiff.,,,,

iii. Third, that the action of the defendant has resulted in damage or is likely to result in damage on account of the misrepresentation of the defendant",,,,

with regard to the origin of the goods and services.,,,,

17.1. The aforesaid principles were reiterated in *Consorzio Del Prosciutto Di Parma vs. Asda Stores Limited and Others*, [2001] UKHL 7; and",,,,

Harrods Limited vs. Harrodian School Limited, 1996 RPC 697.",,,,

17.2. It is pertinent to note, while applying the first indicia set out hereinabove, the difference between reputation and goodwill has to be borne in mind.",,,,

While goodwill is inextricably linked to territory, reputation may extend beyond the geographical area where business is carried out. [See: Kerley Law",,,

of Trademarks and Tradenames, 15th edition, paragraph 18-025, page 580]"",,,

17.3. Therefore, in a case, where a plaintiff institutes a passing off action, it is incumbent upon him to demonstrate that he has inter alia goodwill in the",,,

jurisdiction over which the concerned Court has sway.,,,

17.4. The very same parameters have been adopted by this Court as well. In this behalf, see the following observations in Rich Products Corporation",,,

& Anr. vs. Indo Nippon Food Ltd., 2010 SCC OnLine Del 734 [which were sustained by the Division Bench of this Court, vide judgement dated",,,

20.09.2010, passed in RFA (OS) No. 37/2010].",,,

â??39. Consequently, this brings me to the submission of the plaintiffs that the defendant's use of the infringed mark constitutes passing off.",,,

In this connection, let me reiterate the well known parameters of what constitutes passing off. Passing off as is ubiquitously held in most",,,

jurisdictions subject to usual turn of phrase or change of phraseology, a tort of false representation, whether intentional or unintentional",,,

whereby, one person attempts to sell his goods or services as those manufactured or rendered by another which is â??calculatedâ? to",,,

damage the goodwill of that other person. Thus, the necessary ingredients which a plaintiff in an action of passing off is required to prove," ,,,

is the:",,,

(i) employment of deception. Mere confusion will not suffice;,,,

(ii) intent is not a necessary as long as the unwary consumer is deceived; and,,,

(iii) the act of the tort should injure the goodwill not just his reputation.,,,

The cause of action for passing off are premised on the â??classical trinityâ? form or the extended form. A â??classical formâ? of passing,,,

off is one where a person seeks to trade his goods as those originating from another; thus injuring such person's individual business and,,,

goodwill. Extended form of passing off is one where court's seek to protect â??shared goodwillâ? accruing in favour of a class of traders;,,,

for example, on account of geographical connotations, [see J. Bollinger SA v. Costa Brava Wine Co Ltd., (1960) R.P.C. 16 (in short the",,,

â??Champagne caseâ??), Vine Products Ltd. v. Mackenzie & Co Ltd., (1969)

R.P.C. 1 (in short the "Sherry case"), Erven Warnink v. ...

J. Townend & Sons, (1980) R.P.C. 31 (HL) (in short the "Advocaat case") and Reckitt Colman Products Ltd. v. Borden, (1990) R.P.C. ...

341 H.L.] ...

39.1. In my view, the defendant cannot be said to have committed the tort of passing off if the test set out above are applied to the facts ...

obtaining in the instant case. The defendant's trade mark "Bells Whip Topping" when looked at in the setting in which the mark is ...

affixed, which has a picture of a cake on the cover, leaves no doubt in my mind that there is not even a slightest attempt to deceive by the ...

defendant. The defendant on the packaging has prominently alluded to the fact that the product is being sold by it as "Bell's" non- ...

dairy "Whip Topping". Therefore, merely because it uses on its packaging a colour scheme comprising of red, blue and white colours ...

would not, to my mind, be sufficient to constitute a tort of passing off. ...

18. In the instant case, what has come through is that the plaintiffs' assertion that Dabur has committed the tort of passing off is, broadly, pivoted ...

on the following three grounds ...

i. First, the colour, smell, configuration, and shape of the soap bar. ...

ii. Second, the taglines used by the plaintiffs qua its products such as "be 100% sure"; "everyday protection against a wide range of unseen" ...

germs"; "germ protection for the whole family"; and "protection from 100 illness causing germs". ...

iii. Third, the device of a sword and an overlapping plus + design on the product/packaging. ...

18.1. Insofar as the first aspect is concerned which is the colour, shape, and smell of the soap bar "there is enough and more material to show that" ...

there are several soap bars in the market with similar features if not identical features. ...

18.2. Likewise, insofar as the second and third aspects are concerned, which pertain to, the use of taglines and indications by Dabur that are similar to ...

those taglines and indications used by the plaintiffs "it is required to be noticed that neither the taglines nor the indications/signs are registered with ...

the trademark authority. Since the competing products, like others products in the market, are hygiene-products, the taglines and indications/signs used ...

by the plaintiffs appear to be "customary" in the "current language" of the trade for the purpose of designating hygiene-products which,,,

includes soap bars. [See: Merz & Kreel GmbH & Co., Case C-517/99, European Court of Justice (2001)]",,,

18.3. That being said, one cannot quibble with the proposition that taglines or indications/signs, over a period of time, by their constant use, can get",,,

embedded in the minds of the customer so as to remind them of the origin of the goods.,,,

18.4. In other words, the taglines and indications/signs can, over a period of time, acquire a secondary meaning and/or significance whereby goods and",,,

services offered by the plaintiff can be distinguished from those of its competitors. This aspect, however, is a matter which falls in the realm of",,,

evidence. The evidence placed before the Court should be such which demonstrates distinctiveness. [See: Rich Products Corporation & Anr. vs. Indo,,,

Nippon Food Ltd., 2010 SCC OnLine Del 734]"",,,

18.5. The use of such taglines and indications/signs is not enough to establish distinctiveness. Therefore, financial figures placed on record with regard",,,

to sales turnover and advertising spend may point in the direction of the use of taglines and indications/signs but that, by itself, may not be enough to",,,

establish distinctiveness. [See: British Sugar PLC vs. James Robertson & Sons, 1996 RPC 281] The plaintiffs have not placed on record any surveys",,,

of customers, which would, at least prima facie, establish the distinctiveness of their taglines or indications/signs. I must add a caveat here that even",,,

surveys have to be looked at carefully, albeit, at the stage of trial as their outcome would be dependent on the sample and the quality of the questions",,,

put to the consumers.,,,

19. It would be relevant to note that, at this juncture, there is no tangible material placed before me by the plaintiffs which would persuade me to hold",,,

that the taglines and indications/signs and other features referred to hereinabove remind the consumer of the plaintiffs' product.,,,

19.1. Besides this, as alluded to hereinabove, passing off action is a tort of deceit and when one looks at the get-up adopted by Dabur, it is clear, at",,,

least at this stage, that it does not intend to misrepresent that the soap bar manufactured by it originates from the plaintiffs. The packaging boldly bears",,,

the mark "Dabur". The background colour is dark green as against the

packaging of the plaintiffs which has a combination of white and light,,,
green. Dabur's packaging bears a cross and a shield whereas that of the
plaintiffs bears a plus + sign.,,,

19.2. To my mind, even if the test of "imperfect memory" is applied [which,
in any case, cannot be pressed too far], it does not have me conclude,",,

at least at this stage, that Dabur's product could be confused with that of the
plaintiffs.".,,,

19.3. Clearly when a consumer buys defendant's product, it cannot miss the
word mark "Dabur".,,,

20. In my opinion, the cumulative effect of the packaging adopted by Dabur is
one which seeks to distinguish its product from that of the",,,

plaintiffs. It needs to be emphasized that insofar as the shape and
configuration is concerned, the same is not apparent to the consumer till such",,,

time the packaging is removed.,,,

21. It has to be borne in mind that when a Court adjudicates upon an
infringement or a passing off action, it is required to take into account, not
only",,,

the rights of the plaintiff and the defendant, but also the interests of the public at
large. While the plaintiff is interested in preserving and protecting the",,,

investment made by her/him in the mark so that she/he can derive maximum
gains, the defendant asserts a countervailing right, which is, to attract",,,

maximum number of consumers. The public, on the other hand, seek creation of
an environment which is conducive to a healthy competition amongst",,,

manufacturers and sellers.,,,

22. I may also indicate that in a passing off action, while precedents are good for
the purposes of alluding to the established principles, most cases turn",,,

on the facts obtaining in the matter. The following observations in the Jiff
Lemon's case bring this aspect to the forefront, which practitioners and",,,

courts, need to bear in mind.".,,,

"Although your Lordships were referred in the course of the argument to a
large number of reported cases, this is not a branch of the",,,

law in which reference to other cases is of any real assistance except
analogically. ".,,,

22.1. Therefore, multiplying authorities will not take the matter any further. Each
case, more often than not, especially, in a passing off action, turns on",,,

its own facts.,,,

Conclusion: -,,,

23. Therefore, for the foregoing reasons, I am not inclined to grant an injunction in favour of the plaintiffs and against Dabur.",,,

24. The captioned application is, accordingly, dismissed.",,,

25. It is clarified, though, that the observations made hereinabove will not impact the final adjudication of the case. Furthermore, Dabur will maintain",,,

an account of sales made (along with supporting documents) concerning its soap bar which bears the impugned design and get-up. The details and the,,,

accompanying documents, backed by an affidavit of an authorised representative, will be placed on the Court record, every quarter, till the final",,,

adjudication of the case.,,,

At 10:30 A.M.,,,

Present: Ms. Nancy Roy, Advocate on behalf of the plaintiffs",,,

Mr. Manish Mishra, Advocate on behalf of Dabur",,,

CS(COMM) 319/2020,,,

26. I am informed by Mr. Manish Mishra, who appears on behalf of Dabur, that the matter, in the usual course, is fixed before the Joint Registrar",,,

(Judicial) on 04.12.2020 for completion of pleadings.,,,

27. Accordingly, let the suit be listed before the Joint Registrar (Judicial) on the aforementioned date. The Joint Registrar (Judicial) will ensure that the",,,

pleadings are completed and admission/denial of the documents is carried out by the parties before the matter is listed in Court.,,,

28. List the matter before this Court on 02.03.2021. The date already fixed in the matter i.e. 02.12.2020 shall stand cancelled.,,,