

(2015) 06 MAD CK 0234

In the Madras High Court

Case No : Original Application Nos. 33 to 35 of 2015 in C.S. No. 23 of 2015

Wipro Enterprises Limited

APPELLANT

Vs

Heinz India Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 10-06-2015

Acts Referred:

Trade and Merchandise Marks Act, 1958 — Section 2(d)
Trade Marks Act, 1999 — Section 11, 9

Citation : (2015) 63 PTC 49

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : P.S. Raman, SC for Gladys Daniel, for the Appellant; T.V. Ramanujam, SC for Arun C. Mohan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J.—The applicant in all these applications is the plaintiff in C.S. No. 23 of 2015 and the respondents are the defendants. The said suit has been filed for the following reliefs:--

"(a) granting a permanent injunction, restraining the defendants by themselves, their servants, agents, men, or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale any kind of products using the mark VOLT or similar sounding marks in the course of their business and pass of their products using the trademark VOLT as and for products sold under trademark BOLTS of the plaintiff or enable others to pass off.

(b) granting a permanent injunction, restraining the defendants by themselves, their servants, agents, men, or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale any kind of products using the tag line INSTANT ENERGY. ANYTIME. ANYWHERE. or similar sounding lines in the course of their business and pass of their products using the tag line ENERGY OF GLUCON-D. ANYWHERE. ANYTIME as and for products sold under the tag line INSTANT ENERGY. ANYTIME. ANYWHERE. of the plaintiff

or enable others to pass off.

(c) granting a permanent injunction, restraining the defendants by themselves, their servants, agents, men, or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale any kind of products using the colour scheme and get up as seen in document No. 1 or similar colour scheme and get up in the course of their business and pass off their products using the colour scheme and get up in document No. 2 as and for products sold under the colour scheme and get up in document No. 1 of the plaintiff or enable others to pass off.

(d) directing the defendants to surrender to the plaintiff all products, packing materials, cartons, advertisement materials and hoardings, letterheads, visiting cards, office stationery and all other materials containing/bearing the trademark VOLT or any other deceptively similar trademark in respect of pharmaceutical and medicinal preparations.

(e) for a preliminary decree in favour of the plaintiff, directing the defendants to render an account of profits made by them by the use of the trademark VOLT in relation to their products and for a final decree in favour of the plaintiff for the amount of the profits found to have been made by the defendants after the defendants have rendered accounts and costs."

2. Pending suit, the applicant/plaintiff has taken out three applications in O.A. Nos. 33 to 35 of 2015 for interim injunction in respect of prayers a, b and c made in the plaint.

3. For the sake of convenience, the applicant will be referred to as the plaintiff and the respondents will be referred to as defendants.

4. The case of the plaintiff, in brief, is as follows:--

"(a) The plaintiff is a public limited company having their business interest in IT, software development and other related services. The plaintiff entered into a Scheme of Arrangement with one Azim Premji Custodial Services Private Limited and Wipro Trademarks Holding Limited. This scheme demerged its diversified business i.e., the customer care products and others to Azim Premji Custodial Services Private Limited. Subsequently, Azim Premji Custodial Services Private Limited has been converted into a public limited company. The said scheme has been approved by the High Court of Karnataka vide its order dated 1.3.2013 in Co.P. No. 8/2013 and Co.P. No. 9/2013 and Co.P. No. 10/2013. Subsequent to the same, the said Azim Premji Custodial Services Private Limited has changed its name and is presently known as WIPRO ENTERPRISES LIMITED by its Certificate of Incorporation dated 19.4.2013.

(b) During the course of their business, on 16.4.2003, the plaintiff had acquired the trademark GLUCOVITA from Hindustan Lever Limited, who was the successor in interest from International Best Foods Ltd. In view of the demerger, this mark now vests with the plaintiff company. The plaintiff is the proprietor of various

trademarks. One such trademark is the mark BOLTS, which was conceived and adopted in the year 2012 and used along with the house mark GLUCOVITA to market and sell a new segment of glucose based chewy tablets. With three active ingredients viz., Vitamin-D, Calcium and Iron, this special formulation with glucose is marketed as an instant energy tablet for body and brain. As water is not required, one can keep these BOLTS tablets in the pocket and chew 1-2 BOLTS whenever they need instant energy. It is ready to eat and handy to carry and is a good advantage over other similar products for instant energy. In fact, the plaintiff has filed applications seeking registration of the trademark BOLTS and the said application is still pending for registration.

(c) The plaintiff is one of the pioneers in the business segment of glucose based chewy tablets and the plaintiff's products have already earned enormous goodwill and reputation among the public. Due to the continuous and uninterrupted usage, the trademark BOLTS has come to be associated exclusively with the plaintiff. The plaintiff has also spent a considerable amount of money in promoting its product under the trademark BOLTS.

(d) While so, in December 2014, the plaintiff came across the identical product being marketed and manufactured by the defendants 1 and 2 under the trademark VOLT and sold inter alia by the third defendant. Although, the said product is marketed along with their brand name GLUCON-D, the adoption of the nearly identical trademark VOLT in respect of the identical product shows the mala fide nature of the defendants. The deliberate intention of the first defendant in adopting the deceptively similar trademark is further compounded by the fact that the first defendant has not only adopted the nearly identical trademark to that of the plaintiff but has also adopted the identical colour scheme and get up for its packaging. The first defendant has also copied the BOLT device appearing on the plaintiff's labels. The first defendant has intentionally caused its product to have such a strong similarity in size, combination of colour and get up to that of the plaintiff's product. The first defendant has made a conscious copy of the get up of the product of the plaintiff with a view to trade upon the good will and reputation that have been built up by the plaintiff. The first defendant did not stop with the adopting the nearly identical trademark VOLT, colour scheme, get up, lay out and size, but also went on to make a slavish imitation of the tag line used by the plaintiff to market its product under the mark BOLTS. The plaintiff markets the product under the tag line INSTANT ENERGY... ANYTIME ANYWHERE. The first defendant has also adopted the tag line ENERGY OF GLUCON-D ANYWHERE ANYTIME. It cannot be an innocent coincidence that the words ENERGY, ANYWHERE and ANYTIME find their place in both the tag lines interchangeably. These similarities are not out of chance or coincidence but a mala fide, fraudulent attempt to ride on the plaintiff's reputation.

(e) The first defendant has also chosen to keep the pricing of the impugned product similar to that of the plaintiff giving added reason for confusion in the mind of the innocent consumer. The defendants in further attempts to copy the

artwork of the plaintiff, chose to place the pricing of its product at Rs. 10/- in a perforated circle form in a similar manner as done by the plaintiff. Thus, the first defendant has consciously adopted all the distinguishing features of the plaintiff such as the trade name, device of BOLT, tag line, pricing of the product, placement and manner of putting MRP and has made inconspicuous changes in an attempt to escape the allegation that it is a copy. The mark adopted by the defendants is a mere copy of the plaintiff's well known trademark BOLTS, as a result of which, passing off takes place in the trade and the general public are unable to distinguish the defendants' product from that of the plaintiff's. Hence, the plaintiff has filed the present suit and pending suit, they have filed the present applications for interim injunction."

5. When the applications came up before this Court on 9.1.2015, counsel for the first defendant appeared before this Court and took notice. Hence, this Court has ordered notice to defendants 2 and 3 and directed the first defendant to file counter.

6. On appearance, the first defendant filed a common counter in all the applications. The sum and substance of the common counter is as follows:--

"(a) The trademark of the plaintiff BOLTS is a generic and descriptive word i.e., common to the trade and hence, the plaintiff cannot have any exclusive right over the same. The expression BOLTS has been used by several others even as a trademark much prior to the plaintiff. Hence, the plaintiff, who themselves are not prior user of the expression BOLTS, cannot claim any right and seek an injunction from this Court. At no stretch of imagination, the mark VOLT can be said to be similar or identical to the expression BOLTS in all counts, viz., visually, phonetically and structurally. There cannot be any deception or confusion in the minds of trade and public as the trademark under which both the plaintiff's and the first defendant's goods are manufactured and marketed as GLUCOVITA and GLUCON-D respectively. GLUCON-D is a well known trademark and a common household name and has established a mark for itself. Every consuming public will refer to the product of the first defendant as GLUCON-D VOLT and not just VOLT. It is pertinent to note that on the product label of GLUCOVITA BOLT, the plaintiff themselves have clearly depicted GLUCOVITA in big and legible font size. In fact, the plaintiff has candidly admitted in their affidavit that both the products of the plaintiff and first defendant are known under the trademark GLUCON-D and GLUCOVITA respectively. The mark BOLT/BOLTS are common generic expression over which no one can claim a standalone monopoly. The expression BOLTS is used in several energy products internationally and in India, particularly, glucose based products only to indicate that immediately after the consumption of the said product, the person consuming the same will get instant energy.

(b) The meaning of VOLT as per the English dictionary is the SI unit of electromagnetic force. Electromagnetic force is a force that causes interaction between electrically charged particles. The first defendant has honestly,

bonafidely and carefully chosen the expression VOLT to communicate to the consumer the benefits derived out of consuming GLUCON-D Volt. It indicates sudden force/charge of energy experienced by the consumer when he consumes Glucon-D Volt. The first defendant has used an unique and uncommon word which also conveys the benefits and attributes of its product. The major ingredient in the product of the first defendant is glucose and it is an universal fact that delivering "instant energy" is the most sought after attribute of glucose. The first defendant has used the word VOLT, a synonym for energy, to convey the presence of glucose in the product. Merely because the plaintiff has used BOLTS for their product, it cannot give them exclusive monopoly over all other synonyms of "energy". In any case, the mark VOLT is conspicuously used along with the well known trademark GLUCON-D in as large a font size as the font size of VOLT and any consumer with average intelligence and imperfect recollection cannot by any stretch of imagination be mislead into believing that GLUCON-D VOLT is BOLTS.

(c) It is the further case of the first defendant that the colour scheme, get up and lay out of the first defendant's GLUCON-D VOLT is completely different from plaintiff's GLUCOVITA BOLTS wrapper. The plaintiff is using the mark BOLTS below the device of bolt, whereas the first defendant is using the mark VOLT in a stylized script immediately after the mark GLUCON-D along with the expression energy Bites and the flavour is Tangy Orange. The colour combination used by the first defendant is that of reddish orange whereas the plaintiff's colour combination is that of a light yellow and orange.

(d) In fact, the mark GLUCOVITA came into existence only in the year 2012, whereas the mark GLUCON-D has been a household mark for decades. The practice of highlighting the price of a product within a perforated circle shaped device is a common industry practice from time immemorial and the plaintiff cannot claim monopoly over the same. The composition and ingredients of the orange flavour of GLUCOVITA BOLTS and tangy orange flavour of GLUCON-D VOLT is evidently different and the same has been clearly and consciously specified on the respective packs. GLUCON-D VOLT contains 90% glucose and BOLTS contains only 50% of glucose. The nutrients available in GLUCON-D VOLT are glucose, minerals and Vitamin C and this is clearly depicted on the front of the pack using arrows for highlighting its presence. The packaging styles of both the products are significantly and prominently different. The pack of GLUCON-D VOLT comes in a premium-styled pillow pack and has a additional layer of paper and aluminium foil packaging to ensure and maintain high standards of quality and freshness of the product of the first defendant. The packaging of BOLTS on the other hand comprises a cylindrical plastic tube around which the label is shrink-wrapped.

(e) The first defendant has not copied the device of a bolt on the label of GLUCON-D VOLT. The device of a bolt referred to by the plaintiff is in effect a flash of lightening which depicts sudden energy. GLUCON-D VOLT contains

glucose providing instant energy as instant as that of a flash of lightening. The depiction of a flash of lightening is descriptive of the attributes of GLUCON-D VOLT and has been depicted to convey to its consumers the products attributes by way of a device/graphic. The flash of lightening is symbolic to energy and is hence a descriptive device. Such device of descriptive nature cannot be explicitly granted for use by one player, which such device only can essentially convey the benefit/effect of consumption of a product. Hence, the plaintiff cannot claim any monopoly over the device of a bolt/lightening flash. In any case, the depiction of the device of flash of lightening used on the packing/label of the first defendant is completely different from that of the plaintiff's packing/label. Further, the first defendant has not copied the tag line viz., "instant energy anytime anywhere" as used by the plaintiff. It is the plaintiff who has misappropriated the defendants' intellectual property rights and has vexatiously used the tag line "instant energy" in its chewable tablets. It is well known in the industry and to the trade and public that the first defendant's GLUCON-D comes with the tag line "instant energy" in respect of its glucose based beverage mix. The tag line of the first defendant is "Energy of Glucon-D, Anywhere, Anytime". The expression "anytime, anywhere" is a common generic expression used by several others in respect of several goods and services that are specifically intended to give consumers the benefit of anything that is readily available/conveniently available/handy and that the expressions "anytime, anywhere" is a public juris expression over which no one can claim monopoly.

(f) The plaintiff has applied for registration of the expression BOLTS under application No. 2827969 in classes 29 and 30 in respect of Jellies; fruit based confectionery (class 29) and Confectionery items (Class 30). Therefore, it is borne out from the records that the plaintiff is using the expression BOLTS not only in respect of glucose tablets but also in respect of jellies and fruit based confectioneries and in both the classes, the plaintiff has claimed user 2012. As there are more than one product manufactured and marketed by the plaintiff themselves under the mark BOLTS, the consuming public may not associate the expression BOLTS in respect of glucose tablets alone. In fact, the trademark registry has objected the application filed by the plaintiff under Sections 9 and 11 of the Trade Marks Act. The plaintiff in response to the objection raised by the trademarks registry, has categorically stated that they are using a unique label and there are no chances of deception and confusion in the minds of trade and public. The bona fide intent of the first defendant is evident in the act of the defendants to file for registration of the mark GLUCON-D VOLT instead of just VOLT. The trademark GLUCON-D VOLT adopted by the first defendant is not phonetically or visually or structurally identical to that of the plaintiff's trademark GLUCOVITA BOLTS. A bare perusal of the plaintiff's label and the first defendant's label itself is evident that the first defendant's label is entirely different in respect of colour scheme, get up, lay out and size. The plaintiff has filed the present suit only to gain unlawful monopoly over the word BOLTS, which is common to trade and to stifle competition. Thus, they sought for the dismissal

of all the applications."

7. The plaintiff has filed reply affidavit to the counter and also additional reply affidavit, reiterating the averments made in the affidavits filed in support of the applications and the first defendant has also filed additional common counter affidavit.

8. Learned senior counsel appearing for the plaintiff submitted that the plaintiff is dealing with several consumer products. In the year 2012, they have conceived and adopted the mark BOLTS to sell a new segment of glucose based chewy tablets. The plaintiff is using the mark BOLTS along with their house mark GLUCOVITA. Due to the continuous and uninterrupted usage, the mark BOLTS has come to be associated exclusively with the plaintiff. The plaintiff has also filed applications seeking registration of the trademark BOLTS and the said application is still pending for registration. While so, during the year 2014, the plaintiff came to know that the defendants are marketing identical product manufactured by the first defendant by using the trademark VOLT along with their brand name GLUCON-D. The trademarks BOLTS and VOLT are phonetically similar. Though the plaintiff is using the trademark BOLTS along with their house name GLUCOVITA, the word BOLTS is the sub brand of the plaintiff. The sub brand is also entitled for the protection and the Courts have been protecting sub brands from misuse. In this regard, learned senior counsel appearing for the plaintiff relied upon the judgment of Delhi High Court reported in *Societe des Produits Nestle S.A. and Another Vs. Gopal Agencies and Others*, (2004) 115 DLT 230 : (2005) 30 PTC 63 , and submitted that the factual aspects of that case would show that the plaintiffs in that case launched the Maggi Sauce in the year 1985 originally comprising of tomato and hot and sweet variants. In the year 1987, Chilli Garlic and Masala Chilli variants were also introduced. The dispute arose on account of the defendants' mala fide intention of 200 grams bottles in the variants "Hot and Sweet", "Chilli Garlic" and "Masala Chilli" marketed by the plaintiffs since 1985 and 1987 respectively. The plaintiffs in that case filed the suit as against the defendants on account of the defendants marketing 200 grams bottle with identical three variants viz., "Hot and Sweet", "Chilli Garlic" and "Masala Chilli" with effect from 7th April, 2003. In the said case, the Delhi High Court held that the plaintiffs in that suit were using the sub brands "Masala Chilli" and "Hot and Sweet" in the market for almost two decades. The first defendant has not been able to give any cogent explanation as to why it adopted exactly the same sub brands "Masala Chilli" and "Hot and Sweet". Thus, the Delhi High Court has come to the conclusion that the two sub brands "Masala Chilli" and "Hot and Sweet" were inspired by the plaintiffs' products and deserved to be enjoined. Further, for the same proposition, the learned senior counsel appearing for the plaintiff has also relied upon the judgment of this Court reported in 1995-PTC-251 - *M/s. Ciba Geigy Limited and another v. M/s. Crosslands Research Laboratories Ltd.*

9. Learned senior counsel appearing for the plaintiff has also relied upon the

judgment of the Delhi High Court reported in *Filex Systems Pvt. Ltd. Vs. Rotomac Pens (Guj.) Pvt. Ltd.*, (2004) 73 DRJ 429 : (2004) 28 PTC 300 . and submitted that the factual aspect of that case would show that in September 1996, the plaintiff had adopted the trademark SOLO in respect of stationery items. The said trademark SOLO has continuously and extensively been used in the course of the trade by the plaintiff ever since 1996. The application filed by the plaintiff for registration of the trademark SOLO before the Registrar of Trademarks, Mumbai was also pending. While so, the defendant Rotomac Pens (Guj.) Pvt. Ltd. has also started to use the trademark SOLO in respect of stationery items including pens/ ball pens/jotter pens along with their house mark ROTOMAC viz., ROTOMAC SOLO. The Delhi High Court, while dealing with the said case has held that the adoption of the word SOLO by the defendant in relation to its own goods i.e., pen manufactured and sold by it in the market will infringe the proprietary rights of the plaintiff in its trade mark SOLO and the defendant would be guilty of committing passing off its own goods as those of the plaintiff. It is an unfair trade practice which cannot be allowed to be continued. For the same proposition, the learned senior counsel has also relied upon the judgment reported in *Pidilite Industries Limited Vs. Jubilant Agri and Consumer Products Limited*, (2014) 2 ABR 142 : (2014) 57 PTC 617 .

10. That apart, the learned senior counsel appearing for the plaintiff by inviting the attention of this Court to the label mark of the plaintiff and first defendant, submitted that the trademarks BOLTS and VOLT are not only phonetically similar but also visually similar. In such cases, the bad faith is more than evident and therefore, the plaintiff is entitled for protection. In support of his contention learned senior counsel has relied upon the judgment reported in *M/s. Cadila Laboratories (P) Ltd., Ahmedabad and another Vs. M/s. Kamath Atul and Co., Nellokeri, Kumta*, AIR 1991 Kar 303 : (1990) ILR (Kar) 2576 , Kumta and submitted that the plaintiff in that case was a proprietary concern engaged in the manufacture and sale of only one product viz., HURBINOL skin ointment. The first defendant was a multinational pharmaceutical company engaged in the manufacture of various pharmaceuticals including skin ointment in the name of HERBINOL. While dealing with the phonetic similarity in between the trademark of the plaintiff HURBINOL and the trademark of the first defendant HERBINOL, the Karnataka High Court placed reliance on the judgment of Delhi High Court reported in *Ranbaxy Laboratories Ltd. Vs. Dua Pharmaceuticals Pvt. Ltd.*, AIR 1989 Delhi 44 : (1988) 2 ARBLR 315 : (1988) 36 DLT 133 . and held that in that case, a drug making company had registered the trademark CALMPOSE having handsome turnover. Subsequently, another drug making company floated its similar product under the trademark CALMPROSE, only by inserting the letter "R" and converting CALMPOSE into CALMPROSE. The Delhi High Court held that the two trademarks CALMPOSE and CALMPROSE appeared to be phonetically and visually similar. Thus, by applying the ratio laid down in the judgment of the Delhi High Court, the Karnataka High Court has come to the conclusion that the defendants before the Court, by substituting the letter "E" in the place of "U",

have copied the trademark of the plaintiff HURBINOL. By coming to such conclusion, the Karnataka High Court granted an order of interim injunction in favour of the plaintiff. Even in this case also, the plaintiff's trademark BOLTS and the first defendant's trademark VOLT are phonetically similar. The first defendant by substituting the letter "V" in the place of "B", is marketing their product. Hence, the plaintiff is entitled for interim injunction. That apart, learned senior counsel appearing for the plaintiff submitted that by adopting an identical and deceptively similar mark, the defendants are trying to create confusion in the minds of the consumers by passing off the first defendant's products as that of the plaintiff's products. Hence, as the prior user of the mark BOLTS, the plaintiff is entitled for interim injunction. In this regard, learned senior counsel appearing for the plaintiff has also relied upon another judgment reported in K.R. Chinna Krishna Chettiar Vs. Shri Ambal and Co., Madras and Another, AIR 1970 SC 146 : (1969) 2 SCC 131 : (1970) 1 SCR 290 , and another, wherein it has been held that the words AMBAL and ANDAL have such great phonetic similarity that they are undistinguishable having the same sound and pronunciation. In whatever way they were uttered or spoken, slowly or quickly, perfectly or imperfectly, meticulously or carelessly and whoever utters them, a foreigner or a native of India, the danger of confusion between the two phonetically allied names is imminent and unavoidable. For the same proposition, the learned senior counsel has also relied upon the judgment reported in Sanat Products Ltd. Vs. Glade Drugs and Nutraceuticals Pvt. Ltd. and Another, (2003) 27 PTC 525 .

11. Apart from the phonetical similarity, learned senior counsel appearing for the plaintiff by inviting the attention of this Court to the label of the plaintiff and defendants and pointed out the usage of the deceptively and phonetically similar Trademark VOLT in respect of the identical product Glucose Based Chewy Tablets and the usage of the lightning BOLTS device and the usage of quarter oranges and the usage of orange and yellow overall color-scheme, get up and lay out and the usage of the deceptively similar tag line ENERGY OF GLUCOND ANYWHERE ANYTIME and the same size of packaging and the manner of printing the price in a perforated circle at Rs. 10/- and the manufacturing of the tablet which is an identical replica of the plaintiff's tablets. Thus, the learned senior counsel submitted that the label of the first defendant has a strong similarity in size, combination of colour, get up and layout as that of the plaintiffs. The first defendant has intentionally caused its product to have such a strong similarity in size, combination of colour, get up to that of the plaintiffs' products. In this regard, learned senior counsel has also relied upon the judgment reported in Parle Products (P) Ltd. Vs. J.P. and Co., Mysore, AIR 1972 SC 1359 : (1972) 1 SCC 618 : (1972) 3 SCR 289 , wherein it has been held as follows:--

"8. According to Karly's Law of Trade Marks and Trade Names (9th edition, Paragraph 838):

"Two marks, when placed side by side, may exhibit many and various differences, yet the main idea left on the mind by both may be the same. A

person acquainted with one mark, and not having the two side by side for comparison, might well be deceived, if the goods were allowed to be impressed with the second mark, into a belief that he was dealing with goods which bore the same mark as that with which he was acquainted. Thus, for example, a mark may represent a game of football; another mark may show players in a different dress, and in very different positions, and yet the idea conveyed by each might be simply a game of football. It would be too much to expect that persons dealing with trade marked goods, and relying, as they frequently do, upon marks, should be able to remember the exact details of the marks upon the goods with which they are in the habit of dealing. Marks are remembered rather by general impressions or by some significant detail than by any photograph recollection of the whole. Moreover, variations in detail might well be supposed by customers to have been made by the owners of the trade mark they are already acquainted with for reasons of their own".

9. It is therefore clear that in order to come to conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him. In this case we find that the packets are practically of the same size, the colour scheme of the two wrappers is almost the same; the design on both though not identical bears such a close resemblance that one can easily be mistaken for the other. The essential features of both are that there is a girl with one arm raised and carrying something in the other with a cow or cows near her and hens or chickens in the foreground. In the background there is a farm house with a fence. The word "Glucose Biscuits" is one and "Gluco Biscuits" on the other occupy a prominent place at the top with a good deal of similarity between the two writings. Anyone in our opinion who has a look at one of the packets today may easily mistake the other if shown on another day as being the same article which he had seen before. If one was not careful enough to note the peculiar features of the wrapper on the plaintiffs' goods, he might easily mistake the defendants' wrapper for the plaintiffs' if shown to him some time after he had seen the plaintiffs. After all, an ordinary purchaser is not gifted with the powers of observation of a Sherlock Homes. We have therefore no doubt that the defendants' wrapper is deceptively similar to the plaintiffs' which was registered. We do not think it necessary to refer to the decisions referred to at the bar as in our view each case will have to be judged on its own features and it would be of no use to note on how many points there was similarity and in how many others there was absence of it."

By relying upon the said judgment, learned senior counsel submitted that to find out the visual similarity, it is not necessary to keep both the trademarks of the plaintiff and the first defendant side by side. To find out as to whether there is

any difference in the design, it would be sufficient if the mark bears such an overall similarity to the registered mark, usually dealing with one to accept the other if offered to him. For the same proposition, learned senior counsel has also relied upon the judgment reported in Colgate Palmolive Company and Another Vs. Anchor Health and Beauty Care Pvt. Ltd., (2003) 8 AD 228 : (2003) 108 DLT 51 : (2003) 27 PTC 478 : (2004) 1 RAJ 214 , wherein it has been held that if similarities of trade dress are substantial from the look of the two goods, it comes within the mischief of passing off. Thus, the learned senior counsel submitted that lot of similarities found between these two trademarks would show that these similarities are not an innocent coincidence, but a deliberate, mala fide, fraudulent and slavish imitation of the plaintiff's renowned and well known trade mark BOLTS.

12. Apart from the above submission, learned senior counsel appearing for the plaintiff has also submitted that the plaintiff is marketing their product under the tag line INSTANT ENERGY. ANYTIME. ANYWHERE. The first defendant has also adopted the tag line with an expression ENERGY OF GLUCON-D... ANYWHERE, ANYTIME interchangeably and the same is a clean copy of the plaintiff's tag line. Hence, the plaintiff is entitled for protection of their tag line. In support of this contention, learned senior counsel appearing for the plaintiff relied upon the Division Bench judgment of the Delhi High Court reported in Procter and Gamble Manufacturing (Tianjin) Co. Ltd. and Others Vs. Anchor Health and Beauty Care Pvt. Ltd., (2014) 211 DLT 466 : (2014) 59 PTC 421 . and submitted that the plaintiff in that case was using the expression ALLROUND PROTECTION for its dental care products. The said mark of ALLROUND PROTECTION was also being used by the defendants in that case. The Delhi High Court has come to the conclusion that the tag line is also entitled for protection and thus, granted interim injunction. Thus, by relying upon the said judgment, learned senior counsel appearing for the plaintiff sought for interim injunction as prayed in all these three applications.

13. Per contra, learned senior counsel appearing for the defendants submitted that the word BOLTS is common to trade which has been used by several entities that have a product offering which delivers energy/speed. In this regard, learned senior counsel invited the attention of this Court to page Nos. 48 to 51 of the typed set of papers filed by the defendants and demonstrated that the word BOLTS is being used in various products internationally, specifically energy related products. Similarly, by inviting the attention of this Court to page Nos. 78 to 80 of the typed set of papers, learned senior counsel submitted that the word BOLTS is being used for other goods and services also. Further, by inviting the attention of this Court to the dictionary meaning of VOLT, which means the SI unit of electromagnetic force, learned senior counsel submitted that the word VOLT was honestly, bona fide and carefully chosen by the first defendant to deliver the meaning of instant energy, which is the most sought after attribute of glucose. Since the plaintiff is using the mark BOLTS for their products, it cannot give them exclusive monopoly over all other synonyms of energy. Further more,

the plaintiff is not the originator or prior adopter of the expression BOLTS. The said mark is used only along with the mark GLUCOVITA and not in isolation. Similarly, the first defendant is using their mark VOLT along with their house mark GLUCON-D. Further, the learned senior counsel appearing for the defendants submitted that the application filed by the plaintiff for registration of the said mark is still pending since the same was objected by the defendants.

14. Further, the learned senior counsel appearing for the defendants submitted that since the word BOLTS is a common and generic word, the plaintiff cannot have any exclusive right over the said word when the said word was used with a distinctive prefix or suffix. In support of this contention, learned senior counsel appearing for the defendants relied upon the judgment reported in *Nutrine Confectionery Co. Ltd. Vs. Icon Household Products Pvt. Ltd. and ITC Ltd*, (2009) 5 LW 369 : (2010) 42 PTC 41 . For the same proposition, he has also relied upon the following judgments:--

"(i) Unreported judgment made in O.A. No. 331 of 2014 in C.S. No. 290 of 2014 - *M/s. Clogal Eventz v. M/s. India Property Online Private Ltd.*

(ii) *Superfil Products Limited Vs. Sreema Nets* AIR 2015 Mad 89 .

(iii) *A.D. Padmasingh Isaac and Another Vs. Aachi Aappakadai Chettinad*, (2014) 3 MLJ 202 .

(iv) *Kivi Labs Ltd., No. 147/148, GIDC, Por-Ramangamdi, Baroda District, Gujarat-391 243 Vs. Sun Pharmaceuticals Pvt. Ltd.*, (2013) 53 PTC 43 ."

15. Further, the learned senior counsel appearing for the defendants submitted that the judgment relied upon by the learned senior counsel appearing for the plaintiffs in support of his contention that sub brand has to be protected, cannot be made applicable to the facts of this case since in the instant case, the trade names BOLTS and VOLT were not used in isolation by the respective parties. Further, the learned senior counsel submitted that it is incorrect to state that the colour dress and get up of the plaintiff are copied by the first defendant. In fact, the first defendant has used orange colour, only to denote the orange flavour of its product and not for any other practice. The colour combination used by the first defendant is that of reddish orange, whereas the plaintiff's is that of light yellow and orange, which would be sufficient to distinguish both the products. Further, the plaintiff's products is packed in tube packs while the first defendant's products are packed in pillow packs. Similarly, the device of the lightening bolt used by the first defendant in their label is specifically designed by the first defendant in a silvery grey colour and at any stretch of imagination, it cannot be said as similar to that of the device of bolt used by the plaintiff. The device of lightning depicts only to convey the meaning on consuming the tablets, it will give sudden energy.

16. Further, learned senior counsel appearing for the defendants submitted that it is common in trade to mention the price of a product in a perforated circle.

Therefore, the presence of the price of the product in a perforated circle in the first defendant's products cannot be taken as a ground for visual similarity. Moreover, in the instant case, the price in a perforated circle was found only on the label of the plaintiff which was affixed on the jar and not on the product.

17. Further, learned senior counsel appearing for the defendants submitted that the term ANYTIME ANYWHERE is not being used by the plaintiff in the trademark sense to denote origin/source of the product, rather it is used in a descriptive sense. The term ANYTIME ANYWHERE is used by innumerable persons for various goods and services including food products, energy sector and telecom industry and for various specific services emphasizing the need for immediate access such as ambulance services well prior to the plaintiff. The term ANYTIME ANYWHERE is not registered by the plaintiff. Therefore, the plaintiff cannot claim any exclusive right over the said words and they are not entitled to prevent the defendants from using the words "ENERGY OF GLUCON-D... ANYWHERE, ANYTIME". In this regard, learned senior counsel has relied upon the judgment reported in Kellogg Company Vs. Pravin Kumar Bhadabhai and another, (1996) 36 DRJ 509 and submitted that in identical case, the Division Bench of Delhi High Court has held that even assuming that the get up is similar, when there is no intention to play fraud by the defendants in representing his goods as that of the plaintiff, no injunction would be granted. For the same proposition, learned senior counsel has also relied upon the judgment reported in Reebok India Company Vs. Gomzi Active, (2006) ILR (Kar) 3961 : (2007) 34 PTC 164 . Thus, learned senior counsel appearing for the defendants sought for dismissal of all these applications.

18. By way of reply, learned senior counsel appearing for the plaintiff once again by relying upon the judgment reported in 2014 (59) PTC 421 (Del) (DB) - Procter and Gamble Manufacturing (Tianjin) Co. Ltd. and Ors v. Anchor Health and Beauty Care Pvt. Ltd., submitted that the plaintiff in that case is a leading Fast Moving Consumer Goods company and a part of Anchor Group of companies. They used the "ANCHOR ALLROUND PROTECTION" mark extensively including in several regional languages in transliterated instead of translated form. The logo, device and expression "ALLROUND" and "ALLROUND PROTECTION" has acquired secondary meaning. The second defendant in that case viz., Procter and Gamble Business Services, Canada company is the owner of the mark ORAL-B and they launched their toothpaste under the mark ORAL-B ALL AROUND PROTECTION. When a similar nature of submission was made before the Delhi High Court stating that there was no intention to use the expression and the trademark and it is only descriptive nature of product, the said submission was rejected and interim injunction was granted. Thus, the learned senior counsel appearing for the plaintiff submitted that the submission of the learned senior counsel appearing for the defendants that there is no intention to use the expression ANYTIME ANYWHERE, cannot be accepted.

19. With regard to the submission made by the learned senior counsel appearing

for the defendants that the words ANYTIME ANYWHERE are common and generic expression, it is replied by the learned senior counsel appearing for the plaintiff that even an ordinary distinctive word is also entitled for protection. In this regard, learned senior counsel has relied upon the judgment reported in Yahoo!, Inc. Vs. Akash Arora and Another, (1999) 2 AD 229 : (1999) 78 DLT 285 and submitted that as a prior user of the mark, the plaintiff is entitled for interim injunction.

20. I have heard the submissions made on either side and paid my anxious consideration on the said submissions and also perused the entire materials available on record.

21. The question that falls for consideration in this case is whether a prima facie case has been made out by the plaintiff and whether the balance of convenience is in favour of the plaintiff for granting interim injunction in their favour pending disposal of the suit.

22. During the course of their business, in the year 2012, the plaintiff conceived and adopted the mark BOLTS to sell the new segment of glucose based chewy tablets. While so, the first defendant had also launched similar product in the year 2014 by using the trademark VOLT along with their brand name GLUCON-D. Now, it is the case of the plaintiff that they are the prior user of the trademark BOLTS and they are using the mark BOLTS along with their house name GLUCOVITA as their sub brand. Hence, their sub brand BOLTS has to be protected by way of injunction. That apart, it is the further submission of the learned senior counsel appearing for the plaintiff that since the trademark of the first defendant viz., VOLT is phonetically and visually similar to the trademark of the plaintiff, the plaintiff is entitled for interim injunction on the ground of phonetical and visual similarity of the mark. In this regard, learned senior counsel appearing for the plaintiff has relied upon catena of judgments in support of his contention that sub brand is also entitled for protection. On the other hand, it is represented by the learned senior counsel appearing for the defendants that the word BOLTS is a common and generic word and the plaintiff cannot have any exclusive right over the said word. But, I am of the opinion, in the instant case, neither the plaintiff nor the first defendant is using their respective trademarks viz., BOLTS and VOLT in isolation. On the other hand, the plaintiff is using the word BOLTS along with their house name GLUCOVITA viz., GLUCOVITA BOLTS, whereas, the first defendant is using their mark VOLT along with their house name GLUCON-D viz., GLUCON-D VOLT. Therefore, in my considered opinion, since the word BOLTS is a common and generic word, the plaintiff cannot have any exclusive right over the said word when the plaintiff as well as defendants have chosen to use their respective words/marks with the distinctive prefix. It is well settled legal position that each case has to be decided based on the factual aspect of that case. In fact, in the cases relied upon by the learned senior counsel appearing for the plaintiff with regard to the sub brand, the plaintiff in all those cases were using the trademark per se for several

decades. But, in the instant case, the mark BOLTS was started to be used by the plaintiff along with their house mark in the year 2012 i.e., just two years prior to the usage of the first defendant by launching their product GLUCON-D - VOLT. Further, the word BOLTS means a sudden and unexpected event, whereas the word VOLT means SI unit of electromagnetic force, which is descriptive in nature, to describe the product i.e., on consuming pills or chewing tablets it will give the instant energy. Therefore, when a sub brand of the plaintiff is distinctive in nature and that was used along with the house name of the plaintiff, unless the plaintiff establishes that the word BOLTS has acquired secondary meaning by continuous, long and uninterrupted usage, they are not entitled for interim injunction at this stage. In this regard, it would be appropriate to place a reliance on the judgment of the Division Bench of this Court reported in Nutrine Confectionery Co. Ltd. Vs. Icon Household Products Pvt. Ltd. and ITC Ltd, (2009) 5 LW 369 : (2010) 42 PTC 41 , in which I was a party to the said judgment, wherein, it has been held that the appellant in that case cannot have any exclusive right over a common, generic and descriptive word, especially when the said word was used with a distinctive prefix or suffix. The relevant passage from the said judgment is as follows:

"5. The said applications were resisted by the respondents mainly on the ground that the word "Lacto" is a common, generic and descriptive word and hence, the appellant cannot have any exclusive right over the same. There are several other traders using the word "Lacto" as part of their brand names of their confectionery products....

13.... The list of brand/trade mark found in page 3 of the plaint, would show that the word "Lacto" has been used by them as either prefix or suffix or containing as part of its trade mark in their products. The entire material on record would show that the word "Lacto" has not been registered as an exclusive trade mark and all along they have been using the same only as part of the trade mark....

18. Similarly, as pointed out by the learned senior counsel for the respondents, the Indian Standards Institution laid down the standards of various products, from which it is evident the word "Lacto bon bon" is a common generic expression used in relation to milk candies. Under such circumstances, the only contention of the appellant that by long usage of the word "Lacto", it has acquired the secondary meaning, could be looked into at the time of trial and not at this stage. Therefore, in our opinion, no prima facie case has been made out to grant an injunction in favour of the appellants as prayed by them that the respondents are infringing the word "Lacto".

22.... whether the "Lacto" had acquired secondary meaning or not could be gone into only at the time of the trial on the basis of the oral and documentary evidence that may be adduced, since the documents produced by the respondents would show the word "Lacto" forms part of a number of trade marks used by many companies all over the world. Similarly on looking into the samples of the products of the appellant as well as the respondents, we do not

find any deceptive and phonetics similarity between them."

Similarly, in the present case also, the plaintiff as well as the defendants are using their marks BOLTS and VOLT along with their house name. The plaintiff is using the word BOLTS along with their house name GLUCOVITA and the first defendant is using the mark VOLT along with their house name GLUCON-D. Therefore, the plaintiff cannot have any exclusive right over a common and generic word. Though the learned senior counsel appearing for the plaintiff has made the submission by relying upon the judgment reported in Yahoo!, Inc. Vs. Akash Arora and Another, (1999) 2 AD 229 : (1999) 78 DLT 285 , that even an ordinary dictionary word is also entitled for protection, I am of the opinion, only when a common and generic word acquires secondary meaning, the plaintiff is entitled for protection as observed earlier. Further, the question as to whether the said common and generic word has acquired a secondary meaning by way of continuous and long usage by the plaintiff, has to be gone into only at the time of trial and not at this stage. Hence, I am not inclined to accept the submission made by the learned senior counsel appearing for the plaintiff, by relying upon catena of judgments, on the ground that the sub brand is entitled for protection.

23. The learned senior counsel appearing for the plaintiff submitted that there is lot of similarities between the plaintiff's label mark as well as defendants' label mark. In support of his contention, the learned senior counsel has pointed out the following similarities viz.,

"1. The use of the deceptively and phonetically similar Trademark VOLT in respect of the identical product Glucose Based Chewy Tablets.

2. The use of the lightning BOLTS device.

3. The use of quarter oranges.

4. The use of orange and yellow overall color-scheme, get up and lay out.

5. The use of the deceptively similar tag line ENERGY OF GLUCOND ANYWHERE ANYTIME.

6. The same size of packaging.

7. The price depicted in a perforated circle at Rs. 10/-.

8. The tablet is an identical replica of the Applicant's tablets."

By pointing out the above similarities, learned senior counsel appearing for the plaintiff submitted that the label of the defendants has a strong similarity in size, combination of colour, get up and layout as that of the plaintiff. But, I find that in the instant case, the label was affixed only on the jar in both the cases and not on the pack in which the chewing tablets were packed. The similarity pointed out by the learned senior counsel appearing for the plaintiff viz., the presence of the price of the product in a perforated circle as well as the tag line of the plaintiff viz., "INSTANT ENERGY. ANYTIME. ANYWHERE." was available only on the label

which was affixed on the jar and not on the package of the products. Further, I find that the practice of highlighting the price of a product within a perforated circle shaped device is a common industry practice. Therefore, the plaintiff cannot claim any monopoly over the same. So far as the other similarities pointed out by the learned senior counsel appearing for the plaintiff viz., the depiction of flash of lightening used on the package/label of the first defendant is completely similar to that of the plaintiff's package/label and as contended by the learned senior counsel appearing for the defendants, the very device used in the plaintiff's label is that of a normal device of a bolt used by everyone in the industry, whereas the device of the lightening bolt used by the first defendant in their label is specifically designed by the first defendant in a silvery grey colour. Moreover, the said flash of lightening was used by the first defendant only to indicate that when a person begins chewing the tablets, he will get instant energy. The flash of lightening depicts sudden energy. Therefore, in my considered opinion, the flash of lightening is symbolic to energy and hence, it is a descriptive device. Such a device which is descriptive in nature cannot be explicitly granted for use by the plaintiff alone, while such device can essentially convey the benefit/effect of consumption of the product.

24. So far as the colour of the label is concerned, I find that the colour combination of the plaintiff's label is that of a light yellow and orange, whereas, the colour combination used by the first defendant is that of reddish orange. Similarly, GLUCON-D VOLT has shown a half sliced orange and a full orange at two places without leaf, whereas GLUCOVITA BOLTS has shown just a half sliced orange with a few orange leaves. Further, the learned senior counsel appearing for the defendants has also pointed out the following differences between the two labels:--

"a. The font and the font size of "Glucon-D Volt" and Glucovita Bolts are completely different.

b. Glucon-D Volt has shown a half sliced orange and a full orange at two places without the leaf. Glucovita Bolts has shown just a half sliced orange with a few orange leaves.

c. Glucon-D Volt has a universal reddish orange and shades of orange theme as background. Glucovita Bolts has a sunrise theme as its background.

d. The tablets depicted on Glucon-D Volt has engraved on it the signature "GD" device. This is significantly attractive to customers as it is originating from the defendant No. 1 herein.

e. The flavour of Glucon-D Volt is "tangy orange" flavour and that of Glucovita Bolts is simply "orange flavour". "Tangy Orange Flavour" is in fact the name of the signature orange flavour of "Glucon-D" used much prior to the plaintiff herein.

f. The get up Glucon-D Volt has symbolic, distinctive and attractive "yellowish orange splashes and droplets" depicted on its. There are no such graphics on

Glucovita Bolts.

g. Glucon-D Volt clearly and conspicuously classifies the product as "Glucose-based energy bites" which is clearly depicted on the front of pack. Glucovita Bolts, however classifies its product as a "Glucose Based Tablet". There is a marked difference in the categorization of the products of the Applicant and the Respondent No. 1 and such classification is not likely to mislead or confuse consumers into believing that the two products are one and the same.

h. Glucon-D Volt has 3 arrows specifying glucose, calcium, and vitamin C which are the vitamins and minerals added to Glucon-D Volts. The same is absent in Glucovita Bolts.

i. Glucon-D Volts clearly calls its product "Energy bites". Such is not the case with Glucovita Volts."

From the above differences in between the two labels, prima facie, I find that the label of the first defendant could be distinguished from the label of the plaintiff. When that being so, if there is any alleged violation by the first defendant in their label, that has to be established only during the course of trial. In this regard, it would be appropriate to rely upon the judgment of this Court reported in A.V. Rajadurai Nadar Vs. P. Ayya Nadar and Another, AIR 1977 Mad 237 : (1977) 1 MLJ 194 , wherein in an identical circumstances, this Court held as follows:--

"3. We may also observe that the labels on matches generally resemble each other and each trade mark is recognized by a prominent feature appearing in the middle, either in the form of an animal, or in the form of a bird or something else.

4. The expression "deceptively similar" as defined in Section 2(d) of the Trade and Merchandise Marks Act, 1958, means that in order to be that, the similarity or resemblance must be such as it would be likely to deceive or cause confusion. Any conclusion reasonable and proper can be arrived at by a meticulous examination of each detail and then making a comparison. At the same time, what readily strikes the eye must also be conclusive. But, when one looks at it especially from the standpoint of a person who is most likely to use a particular brand of matches, it is appears that the difference is prominent and it cannot lead to any similarity or a deceptive similarity or confusion, then there could be no objection to the two different trade marks. As we said, in our opinion, even a casual observer can see the difference between the camel and the ram and there could be no mistake between the one and the other made by any one even if they are kept side by side, or kept apart. On that view, we allow the appeal with costs throughout."

A reading of the above dictum would show that though the labels would generally resemble each other, the defendant by adding certain matters can distinguish his label marks from those of the plaintiff. In the instant case, by comparing both the marks of the plaintiff and the first defendant, I find that prima facie the label mark of the first defendant is well distinguished from the mark of the plaintiff.

Further more, when a legal right is in existence in favour of the first defendant, any alleged violation by the first defendant could be established only during the course of the trial. Therefore, the plaintiff is not entitled for interim injunction at this stage. In this regard, a reference could be placed in the judgment relied upon by the learned senior counsel appearing for the defendants reported in Kellogg Company Vs. Pravin Kumar Bhadabhai and another, (1996) 36 DRJ 509 , which gives a fitting answer. The relevant portion is usefully extracted hereunder:--

"19. In the present case, in spite of any other close resembleness in the cartons, the name "AIMS" written prominently on the respondents carton would, in our view, prima facie, as in case before Lord Halsbury show that there was no intention on the part of the defendant to play fraud by misrepresenting his goods as the goods of the appellant. In that very case, Lord Halsbury emphasised the need to see the whole description on the goods as one whole and not the individual features in isolation. He said:

"Inasmuch as you and certainly not to impute fraud without proof, you are not to suggest that people are fraudulently committing some commercial trick without sufficient evidence, and I cannot conceive here how anybody could gravely argue that the one thing could be mistaken for the other by anybody who looked as it.

The whole question in these cases is whether the thing - taken in its entirety, looking at the whole thing, is such that in the ordinary course of things a person with reasonable apprehension and with proper eyesight would be deceived."

20. Thus the above case also lays down that the trade dress or rather the whole thing must be seen in its entirety and not parts in isolation. It is not permissible, therefore to say that the square on the left side top had a small red and green border or there was a red band horizontally and defendant's carton if examined from close quarters, showed these features. Viewed as a whole, one can see that the words Kelloggs" and AIMS are prominently displayed on each and therefore there can be no confusion, prima facie.

32. In the result, on our prima facie conclusions, we reject the plea of similarity or likelihood of confusion, we reject the plea of fraud as well as the one based on imperfect memory. We are of the view, prima facie that even though the get up is similar, the different names Kellogg's and AIMS ARISTO prominently displayed, make all the difference and this is not a fit case for interference with the order of the learned Single Judge refusing injunction."

From the dictum laid down in the above judgment, it could be seen that the trade dress or rather the whole thing must be seen in its entirety and not in isolation. Therefore, I am not inclined to accept the submission made by the learned senior counsel appearing for the plaintiff that there are lot of similarities between their products. Further, I am of the opinion, the issue as to whether there is any similarity between the two labels has to be gone into only during the course of trial.

25. Yet another submission of the learned senior counsel appearing for the plaintiff is that the plaintiff is using the tag line "INSTANT ENERGY. ANYTIME. ANYWHERE." and the first defendant is also using the same tag line ENERGY OF GLUCON-D... ANYWHERE, ANYTIME. To the said submission, it is the reply of the learned senior counsel appearing for the defendants that the plaintiff is not the originator of the words ANYTIME ANYWHERE and the said mark is used by several entities like Airtel, SBI Life Insurance and Just Dial, etc. In my considered opinion, as contended by the learned senior counsel appearing for the defendants, the term ANYTIME ANYWHERE is not used by the plaintiff in the trademark sense to denote original/source of the product, rather it is used in a descriptive sense. Further, no material was produced before this Court to show that the plaintiff has advertised their products in the tag line ANYTIME ANYWHERE. The term ANYTIME ANYWHERE was found only on the jar containing the products of the plaintiff and not on the product i.e., on the cylindrical plastic tube, which contains the chewing tablets. In this regard, learned senior counsel has relied upon the judgment reported in 2014 (59) PTC 421 (Del) (DB) - Procter and Gamble Manufacturing (Tianjin) Co. Ltd. and Ors v. Anchor Health and Beauty Care Pvt. Ltd., in support of his contention that the tag line is also entitled for protection. The factual aspect of that case would show that in that case, the tag line ALLROUND was used by the respondent/plaintiff for a long time as a slogan or a tag line. But, in the instant case, as observed earlier, no document was produced before this Court that the term ANYTIME ANYWHERE was advertised extensively by the plaintiff and the said term was associated only with the plaintiff's products. On the other hand, what is conveyed through the tag line ENERGY OF GLUCON-D ANYWHERE ANYTIME is that the consumer can just pop into their mouth the glucose based energy bite and get the same benefit as GLUCON-D in water. Hence, I am not inclined to accept the submission of the learned senior counsel appearing for the plaintiff that the expression "INSTANT ENERGY. ANYTIME. ANYWHERE." found on the label of the plaintiff has to be protected by way of injunction.

26. From all the discussions made above, I am of the opinion, the plaintiff has not made out a prima facie case to grant an order of interim injunction in their favour at this stage and the balance of convenience is also not in their favour and the entire issue involved in this case has to be decided only at the time of trial. Therefore, I am not inclined to grant an order of interim injunction in favour of the plaintiff and all the applications are liable to be dismissed.

27. Accordingly, all the applications are dismissed.