

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: December 09, 2011
Judgment Delivered On: December 20, 2011

+ **FAO(OS) 549/2011**

CARLSBERG INDIA PVT. LTD. Appellant
Through: Mr.Sandeep Sethi, Senior Advocate with
Mr.C.A.Brijesh, Mr.V.Mohini, Mr.Kamal
Sharma and Mr.Peeyoosh Kalra,
Advocates.

versus

RADICO KHAITAN LTD. Respondent
Through: Mr.Vivek Dholakia, Advocate and
Mr.Deepak Gogia, Advocate.

FAO(OS) 567/2011

RADICO KHAITAN LTD. Appellant
Through: Mr.Vivek Dholakia, Advocate and
Mr.Deepak Gogia, Advocate.

versus

CARLSBERG INDIA PVT. LTD. Respondent
Through: Mr.Sandeep Sethi, Senior Advocate with
Mr.C.A.Brijesh, Mr.V.Mohini, Mr.Kamal
Sharma and Mr.Peeyoosh Kalra,
Advocates.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE S.P. GARG

PRADEEP NANDRAJOG, J.

1. We shall be referring to the parties as 'Radico' and 'Carlsberg'. We highlight that Radico Khaitan Ltd. hereinafter referred to as 'Radico' was the plaintiff and Carlsberg India Pvt. Ltd. hereinafter referred to as 'Carlsberg' was the defendant. In the suit filed by Radico against Carlsberg, permanent injunction restraining Carlsberg from using the numeral '8' as a part of its trademark was prayed for. Damages were also claimed. The action is one for infringement and in the alternative for passing off.

2. Radico's case is that it is the registered proprietor of various trademarks, having obtained registration in India and '8 PM' is an essential, distinguishing and identifying feature of the various trademarks, registration whereof has been obtained by Radico. The registered trademarks are '8 PM BERMUDA XXX RUM', '8 PM ROYALE', '8 PM EXCELLENCE BRANDY' and '8 PM BERMUDA WHITE ORIGINAL'. Apart therefrom, Radico claims to be the registered proprietor of the mark '8 PM' pertaining to whisky under Class-32 of the T.M.Act 1999. It is the case of Radico that between the years 2006 – 2007 till 2010 – 2011 its sales have ranged from minimum of ₹2136.4 million to ₹2565.9 million.

3. In a nutshell, Radico pleads a proprietary interest in the mark '8 PM'. It claims that the numeral '8' is an essential,

distinguishing and identifying feature of its mark in relation to the font size and the colour with which the numeral '8' is printed.

4. Grievance in the plaint is to Carlsberg selling beer by launching the product in February 2011 under the trademark 'PALONE 8' with the numeral '8' being used in the same font and colour as is used by Radico. Further grievance is that Radico's slogan 'AATH KE THAATH' pertaining to the whisky sold by it under the trademark '8 PM' has been piggy ridden on by Carlsberg by using the slogan '8 KA DUM'. The grievance is to the stealing of the idea 'AATH KE THAATH' i.e. 'the luxury of eight' by Carlsberg using the slogan '8 KA DUM' i.e. 'the potency of eight', to the concept which emerges in the mind of the buyer who, with the imperfect recollection of a normal person remembering that Radico's product has a feature of 'the luxury of eight', with reference to Radico's trademark '8 PM' would think, and associate, Carlsberg beer when he sees the beer bottle with the label prominently displaying the numeral '8' in the same font, size and colour and styling as that of Radico and the slogan '8 KA DUM' and think that he is seeing a product having same source as that of the whisky i.e. being misled that the beer is a product of Radico.

5. Defence of Carlsberg is that it has sought registration of the trademark 'PALONE 8' for beer in Class-33, and that beer and whisky are different products and the consumer of alcohol is an informed consumer and would not be misled, as claimed by Radico, not only for the reason the

two products are different but even for the reason the price difference of the two products is substantial, in that, the whisky sold by Radico is priced at ₹300/- per bottle and the beer sold by Carlsberg is priced at ₹65/- per bottle. Secondly that the numeral '8' is *publici juris* and common to the trade in alcohol, inasmuch as it is used to denote the quality or the character of an alcoholic drink; and being common to the trade, Radico cannot appropriate the numeral '8' to its exclusive use. Thirdly that the cardinal numbers by their inherent feature of being a cardinal number are bound to lack distinctiveness in character. Fourthly, the trademark '8 PM' is per se non-descriptive and registration being granted under Part-B of the erstwhile Trade and Merchandise Marks Act 1958 was proof of the weakness, due to non-descriptiveness, of the mark. Lastly, Radico does not have any separate registration for the numeral '8' as its trademark and thus cannot claim any exclusive right over the numeral '8'. On said account, it is justified in using the numeral '8' as a part of its trademark 'PALONE 8', in respect whereof its application seeking registration was pending. It is pleaded by Carlsberg that since the beer being marketed by it was a 'Strong Beer' i.e. high in alcohol content, it was entitled to use the numeral '8' to inform the consumer, by way of description of its product, i.e. that the beer had a strong alcoholic content. The slogan '8 KA DUM' was justified by pleading that it was conveying the 'dum' i.e. the potency of its product.

6. An analysis of the impugned order dated September 16, 2011, which we find is a fairly lengthy order,

needs to be penned by us, so that we are able to focus on the issue which needs to be discussed keeping in view the rival contentions.

7. After noting the pleadings of the parties in the plaint and the written statement and submissions urged by learned counsel spanning the first 22 pages of the impugned order, the discussion commences in page No.23 from paragraph 20 onwards. With reference to Section 29 of the T.M.Act 1999 and with emphasis upon clause (c) of sub-section 4 of Section 29 and the rights conferred upon the registered proprietor of a trademark as enumerated in Section 28 of the T.M.Act 1999 and with reference to the exception carved out in Section 30 of the T.M.Act 1999, the learned Single Judge has concluded that a registered proprietor of a trademark cannot prevent others from using a mark or a part of the mark if user thereof is an honest practice in industrial or commercial matters; and after noting the case law as to what would be the objective standards of determining honest practice, the learned Single Judge has opined in paragraph 27 that the same has to be evaluated from two standpoints. First, from the standpoint of a reasonable person in the trade; and second from the perspective of the practices prevalent in the industry i.e. to see what others are doing in the same industry. The learned Single Judge has concluded the general evaluation of the law, as he understood and sought to apply, while deciding the issue of interim relief prayed for in paragraph 32 of the impugned decision as under:-

“32. The propositions which are emerging from the above-mentioned discussions are as under:-

(a) That Section 30 acts as an exception to Section 29 which provides for infringement of trademark;

(b) Section 30(1) safeguards the use of the trademark by anyone other than the registered proprietor if the use of the said trademark is in accordance with the honest practices in the industrial or commercial matters and is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trademark.

(c) Honest practices in the industry/industrial or commercial matters have to be examined objectively and not subjectively for which it can be tested on two-fold basis:-

(i) Reasonable man having knowledge in the trade.

(ii) Practice prevalent in the respective industry.”

8. The second distinct conceptual limb of the impugned order commences with a discussion in paragraph 33 onwards, wherein the learned Single Judge commences the journey by referring to the definition of the expression ‘*mark*’ in Section 2(1)(m) of the T.M.Act 1999 and has highlighted that it encompasses even a numeral being a mark, but has immediately noted treatise and case law on the subject that numerals notoriously lack inherent distinctiveness on account of common and natural practice of them being indicative of quality or characteristic of a product. Further discussion has

led the learned Single Judge to take note of various alcoholic drinks in the market having reference to the numeral '8'; for example, whisky sold under the trademark 'SIGNATURE' with the numeral '8' being displayed prominently on the label; 'BACARDI 8 RUM' etc. Therefrom, the learned Single Judge has, with reference to common practice in the trade of alcohol, brought out that the numeral '8' is common to the trade and hence the non-distinctive character of the numeral '8' in the trade of alcoholic drinks. The learned Single Judge has concluded the second conceptual part of the impugned order by opining in para 40 as under:-

"40. I find substance in contention of the learned counsel for the defendant that the numeral mark 8 is prima facie of non distinctive character. This is due to following reasons:

- That the aforementioned analysis done by the defendants itself shows that major players or competitor like Bacardi, Signature and others etc. nationally and internationally use the numeral 8 on their label. Thus, it does not remain the case of mere formal entries on the register but also is backed by the substantive user of the other parties which negatives the claims of exclusivity.
- There are authorities on the subject stating that there are some numerals like 8.5 or at least 8 which are requirement of the trade which denotes the strength. The said aspect further clarifies that there is some nexus of the numeral 8 in respect of alcohol drinks.
- The plaintiffs are not registered for 8 per se and rather the registration is of 8PM in Part B of the register. The mark on part B was considered to be weak trade mark and rather prima facie descriptive one. The exclusivity in the said mark can be

defeated by showing the evidence of non distinctiveness. In the present case, the same thing has been shown.

- Overall by reading Section 30 of the Act and testing the numeral 8 on the principle of the same (which I have already dealt with above on honest practices of trade), the use of the numeral in these circumstances by a tradesman when there are such overwhelming user by other parties as stated above coupled with the nexus of numeral in the trade, it can be safely said that use of the numeral 8 by any other person including defendant in respect of alcohol or beers cannot be said to be dishonest and would be protected by section 30 of the Act.”

9. With respect to an action for passing off and an action for infringement of non-identical, but alleged to be deceptively similar marks, the learned Single Judge has proceeded to note case law on the point that the test in such cases of deception is identical. The learned Single Judge has then proceeded to note that though sold through the same trade channel, beer and whisky were distinct products and has highlighted that the consumer knows the difference.

10. From paragraph 46 onwards, the decision appears to be relating back to the earlier part of the discussion and the conclusion arrived at in para 40 on the subject of the numeral ‘8’ being non-distinctive in character. The learned Single Judge has once again highlighted the three clauses of sub-section 4 of Section 29 of the T.M.Act and the fact that Radico had obtained registration of the trademark ‘8 PM’ under Part-B of the Trade and Merchandise Marks Act 1958 and has thereafter noted, in paragraph 49, Section 17 of the Trade and Merchandise Marks Act 1958, to conclude that such marks are

prima facie non-distinctive and are descriptive. The learned Single Judge has once again held, what was previously held, probably by way of re-emphasis in paragraph 53, that prima facie infringement would be doubtful.

11. The learned Single Judge has thereafter referred to and distinguished a few judgments pertaining to a numeral being an essential feature of a registered trademark. The discussion is to be found in paragraphs 54 and 55 of the decision.

12. In paragraph 56 onwards, the learned Single Judge has discussed the issue in the context of passing off and by applying the test of identity of composition, identity of consumers, price ranges, consuming public, the goods being of different composition i.e. beer versus wine and the price differentiation, and with reference to the decision of the Supreme Court reported as 2008 (10) SCC 723 Khoday Distilleries Ltd. vs. Scotch Whisky Association & Ors., has opined that notwithstanding commonality in the trade channel, it could not be prima facie established that there was likelihood of deception and goods of Carlsberg being passed off as goods of Radico.

13. Discussing the issue of Radico's slogan 'AATH KE THAATH' and Carlsberg's slogan '8 KA DUM', the learned Single Judge has opined that the said issue would be relevant in the context of similarity in packaging and finding none, has negated the plea of Radico. Though not stated in so many words, aforesaid can be gathered by an intelligent reading of the second sub-para of para 72 of the impugned decision.

14. However, with reference to the styling, the colour used to print the trademark '8 PM' by Radico and the prominence to the numeral '8' while depicting the trademark 'PALONE 8' by Carlsberg, the learned Single Judge terminates the discussion by granting partial injunction in the following words:-

"76. However, I find some substance in the submission of the plaintiff about its grievance that the defendant is using the mark-8 in similar writing style and also in the golden colour which may be avoided. Thus, in order to avoid any confusion, I direct the defendant to use the mark PALONE and numeral-8 together in the same line. The numeral-8 is allowed to be used by the defendant in different writing style in different colour other than in golden colour. This, I am directing this (sic) even (sic) to avoid any bleak chances of misrepresentation. The mark 'PALONE 8' would be used by the defendant in the same size of lettering and fonts. The defendant is, however, granted time up to 31.12.2011 to make such changes and amendment in the packaging and advertisement material as well as in slogan "8 KA DUM" if used by the defendant at present. The defendant shall also maintain true statement of account for the aforementioned products and file the same in this case every quarterly with an advance copy to the plaintiff. The defendant is allowed to use the same as the manner mentioned above."

15. We reproduce herein below the label put on the bottle of whisky sold by Radico as also the label printed on the cardboard box in which the whisky bottle is kept. It is as under:-



16. We reproduce herein below the label put on the bottle of beer sold by Carlsberg as under:-



17. Now, injunctions are not to be granted in an action for infringement of a registered trademark or an action for passing off, to '*avoid any bleak chances of misrepresentation*'. The reason for the limited injunction granted by the learned

Single Judge is thus not sound. In fact, as was rightly argued by Sh.Sandeep Sethi, learned senior counsel for Carlsberg, para 76 of the impugned decision runs contrary to the reasoning of the decision up to paragraph 75 thereof.

18. We have to concur with said argument and our reason is that an analysis of the judgment up to paragraph 75 would show that the learned Single Judge has negated each and every contention of Radico and on the principles i.e. to avoid any bleak chances of misrepresentation, the learned Single Judge has granted limited injunction.

19. But we hasten to add that we are not to be understood as if we have returned a verdict against Radico, for the reason we are yet to give our opinion on the subject. Till this stage of our opinion, we have simply noted the rival arguments and the reflection thereon by the learned Single Judge.

20. It needs hardly any emphasis, that a 'trademark' is a word, name, symbol, device or any combination thereof used by a manufacturer or retailer of a product, in connection with that product, to help consumers identify the product and distinguish the same from the products of competitors. A trademark indicates to consumers that a particular product comes from a distinct source, even if the name of that source is unknown to the consumer. A trademark also functions to indicate quality and reputation, thus creating goodwill in the proprietor of the trademark.

21. The use of a trademark benefits the manufacturer or the merchant of a product as well as the consuming public.

For the manufacturer or merchant, a trademark serves as an advertising tool, facilitating repeat sales and the successful marketing of new products. Individual consumers rely on trademarks to distinguish among competing products and to represent a certain level of quality they have come to expect when purchasing products with which a particular mark is used.

22. A word, letter, numeral or a symbol, used in combination may create a trademark which is distinctive from existing marks used and unrelated to the goods to which it is applied. It may alternatively result in the creation of a trademark which is descriptive.

23. It is settled law, and has been correctly noted and applied by the learned Single Judge, that a holder of a protectable descriptive mark has no legal claim to an exclusive right in the primary, descriptive meaning of the term; consequently, everyone is free to use the term in its primary, descriptive sense; but with a caveat. The caveat is that: *'so long as such use does not lead to consumer confusion as to the source of the goods'*. And in an action for infringement, the *'fair use'* defence *'is available only to situations where the alleged infringer employs a trademark in its descriptive sense, as opposed to: as a trademark.'*

24. Thus, on the facts pleaded before the learned Single Judge, the first question which required to be posed and prima facie opined upon has to be: Whether Radico, the holder of a protectable descriptive mark (8 PM), having no legal claim to an exclusive right in the primary, descriptive meaning of the

numeral '8', could seek to injunct Carlsberg to use the numeral '8' in a manner where the numeral was not being used by Carlsberg as a part of its trademark 'PALONE 8', i.e. as a descriptive numeral; but as a trademark. Or, to put it differently, the same question could have been framed: Whether Carlsberg was entitled to use the numeral '8' by employing the same, allegedly as descriptive of its product, but actually was using the numeral as a trademark. The second question which would arise would be: Whether Carlsberg was imitating the style and the colour adopted by Radico as a slavish imitation to predate upon the reputation of Radico which would subsume within, the question: Whether Radico at all had any protectable interest in the style and colour with/in which it depicted '8 PM'.

25. Whether a single numeral is capable of being a trademark?

26. Trademark jurisprudence in India has fought shy of according trademark status to single numerals or letters. While a combination of letters and numbers has often been found worthy of trademark protection, there is ample material to suggest that the consistent stand taken both by the Trademark Registry and the Courts is to frown upon attempts to secure trademark protection for single digits, single colours and single letters in India.

27. In the instant case, it is not in dispute that the registration obtained by Radico is for the word mark '8 PM', although the usage by Radico, in variance to the registration,

is one that accords primacy to the numeral '8' and relegates 'PM' to almost 1/8th the relative space on the label.

28. Section 17 of the T.M. Act 1999 makes it ample clear that a registered proprietor of a composite mark cannot seek exclusivity with respect to individual components of the trademark. Therefore, by logical extension, it is not open to Radico, which is the registered proprietor of the composite mark '8 PM', to seek protection for infringement of its trademark by a third party who merely uses the numeral '8', since no exclusivity can be claimed in a single numeral.

29. Therefore, in the present case, an action for trademark infringement in respect of the composite word mark '8 PM' against Carlsberg, which uses the mark 'PALONE 8', where the only commonality between the two is the numeral '8', must prima facie undoubtedly fail.

30. If Radico's mark had been a label mark, then the issue of the size and manner of representation of the numeral would have had some bearing, but since the registration is for the word mark *simpliciter*, no case for trademark infringement prima facie appears to be made out against Carlsberg.

31. That brings us to the issue of passing off which is a far more nuanced issue in the light of the various defences that have been set up before this Court.

32. At the outset, it may be kept in mind that while undoubtedly a single numeral does not belong to anybody's exclusive domain, but at the same time an unfettered right to use the numeral in a particular mode and manner is not an automatic right that flows to all third parties. It is open to a

plaintiff to demonstrate through overwhelming evidence that a particular manner of representation of the said numeral or a limited use of the numeral in relation to a particular class of goods has acquired some degree of distinctiveness in relation to the plaintiff and that a similar non-descriptive use of the numeral by a third party may therefore become actionable under the law of passing off.

33. Is Carlsberg's use descriptive in the instant case?

34. The answer must begin by posing the question: Whether the use of the numeral '8' by Carlsberg is in the nature of a descriptive, and hence non-trademark use, or a trademark use. The two are antithetical to each other and one plea, if successful, must necessarily destroy the other. This principle was enunciated by a Single Judge of this Court, in the decision reported as 57 (1995) DLT 49 Automatic Electric vs. R.K.Dhawan in the following words:-

"The fact that the defendant itself has sought to claim trade proprietary right and monopoly in "DIMMER DOT", it does not lie in their mouth to say that the word "DIMMER" is a generic expression. User of the word "DIMMER" by others cannot be a defense available to the defendant, if it could be shown that the same is being used in violation of the statutory right of the plaintiff."

35. In the instant case, too, the plea of Carlsberg unfortunately, suffers from the same fallacy. While on the one hand Carlsberg has applied for registration of the mark 'PALONE 8' and thereby claim exclusivity over the numerical, albeit as a component of a composite mark, its argument that

'8' is a descriptive numerical in the alcohol industry, may hinder its own ability to claim trademark rights over it.

36. Thus, the use and manner of writing 'PALONE 8' by Carlsberg, on its impugned label must be tested for an alleged descriptive use of the numeral '8'.

37. There are three tests which can be evolved to ascertain whether the use of the numeral '8' by Carlsberg is meant to be a descriptive use or is in the nature of a trademark use:

(i) *Does the numeral 8 indicate any quality, functionality, property, content etc. of the product itself?*

The third party instances relied upon by Carlsberg appear to be using '8' in a descriptive manner to denote, for instance, an '8' year vintage or an '8' % blend.

It is, of course, conceivable that there will be instances where the use of a numeral in a trademark will be purely descriptive in nature, even if the trademark itself does not consist of a numeral *simpliciter* and is accompanied by signs, colours or other devices. In evaluating such marks, the test to be applied would be one of: Whether the relevant class of persons, without further thought, perceive the numeral to be descriptive of the characteristics of the goods in question?

This test was enumerated by the European Court of First Instance in rejecting a trademark for the numerals '100' and '300' in respect of printed matter, manipulative puzzles and organisation of competitions by a Polish company. *See C-51/10 P Agencja Wydawnicza Technopol sp. z o.o. v. OHIM (10 March 2010).*

In the present case, by its own admission, Carlsberg is not selling a product to which either the 'year vintage' or 'alcohol-by-volume' descriptors apply. Being beer, it does not involve a question of a vintage and the percentage of alcohol content is admittedly 7.5% and not the exact number of '8'.

So the choice of '8' is more arbitrary than descriptive, as it does not indicate any quality or property of the product.

(ii) Does the numeral '8' appear 'in a manner of speaking' on the label or has been given undue prominence so as to appear as a trademark?

It is apparent that Carlsberg, much like Radico (qua the use of 'PM'), has written the word 'Palone' in a significantly smaller font compared to the numeral '8', which is several times larger. It is clearly not written with an intention to be a mere descriptor but is intended to be the most prominent component of the label. Such a use cannot be termed as a descriptive use and is clearly in the nature of trademark use.

(iii) Does the product, aside from the numeral '8', carry any other mark which is intended to be the 'brand name' or 'trademark' by which consumers are to ask for the product?

The final, and perhaps most important test of descriptiveness is: Whether the product has any other name which could perhaps be called the 'trademark' under which the product is being sold, in order to distinguish it from the descriptive mark/numerical in issue here? The result of such a test is also negative in so much as the product though called 'PALONE 8' by Carlsberg, but given that the numeral '8' is the

single most prominent feature of the label, the product for all practical purposes is being sold under the mark '8' and consumers are likely to identify and ask for the product as '8' and not 'PALONE 8' i.e. the consumer is most likely to tell the bartender or the salesman at a liquor vend: *'Give me beer 8' and not 'Give me beer Palone 8'.*

38. Thus, one can fairly conclude that the use by Carlsberg of the numeral '8' is not an instance of a descriptive use and must be understood as an instance of a trademark use.

39. The next part of the analysis must therefore be: Whether the trademark use of the numeral '8' by Carlsberg is actionable or not?

40. The test applied in similar cases concerning a particular colour scheme or word marks is settled to be one of the *'essential features'* of the composite mark. In the decision reported as (2000) 5 SCC 573 SM Dyechem vs. Cadbury, in para 39, the Supreme Court explained the *'essential features'* inquiry in the following words:

"In the present case, three tests have to be applied. The first one is this: Is there any special aspect of the common feature which has been copied? The second test will be with reference to the mode in which the parts are put together differently? That is to say whether the dissimilarity of the part or parts is enough to mark the whole thing dissimilar (Kerly para 17.17 referred to above). The third test is whether when there are common elements, should one not pay more regard to the parts which are not common, while at the same time not disregarding the common parts?"

41. For similar reasons, this Court, in the decision reported as 2005 (31) PTC 583 (Del) Colgate Palmolive vs. Patel in para 19, held that the 'red-and-white' colour scheme of the 'COLGATE' brand without the addition of the mark 'COLGATE' could not be said to be a feature so essential to the trademark so as to entitle Radico therein to urge passing off by the mere adoption of the 'red-and-white' colour scheme by someone else.

42. The following prima facie conclusions emerge from the above analysis in the instant case:-

A. Radico has a registration for '8 PM' as a composite mark. Thus, it cannot claim exclusivity over the single numeral '8' to restrain Carlsberg for trademark infringement.

B. Carlsberg cannot rely on descriptive use as a defence to pre-empt Radico's claim.

C. For passing off, the last two prongs of the classical *Jif Lemon* trinity have to be applied to test if there is any consumer confusion (or likelihood thereof) and any resultant damage caused to Radico by the impugned use of the numeral '8' by Carlsberg. On the evidence before this Court, the answer prima facie comes up negative in respect of both.

43. Actually, the final question which boils down to is a simple trade dress analysis of the overall '*look and feel*' of the label – which really is an analysis independent of the contents of the label. The concept of a 'trade dress' is inherently built into the Indian statute in the language of Section 2(zb) which

defines a trademark in inclusive terms with elements such as the 'shape of goods', their 'packaging' and 'colour combination' being included as a trademark, provided the following two elements are satisfied, viz.:

- (i) a '*capacity for graphical representation*', and
- (ii) an '*ability to distinguish the goods or services of one person from those of others*'.

44. On applying the above tests it is possible to conclude that Radico's label is capable of trade dress protection.

45. However, the unique elements of Radico's label have not been copied by Carlsberg. On comparing the two labels, one cannot prima facie form an impression that actionable similarity emerges. The mere manner of writing the numeral '8' or the size of it cannot be a sufficient ground for Radico to obtain an injunction. Mere use of black and gold colour combination, which is fairly common to labels of alcoholic products, cannot be unique to Radico. The styling of the numeral '8' is normally two small 'o'; one on top of the other, or the numeral '3' mirroring itself. Prima facie we see no uniqueness to entitle Radico to an interim injunction. Both parties have adopted the latter.

46. Appeal filed by Radico Khaitan i.e. FAO(OS) No.567/2011 wherein prayer is to expand the injunction already granted is accordingly dismissed.

47. Appeal filed by Carlsberg i.e. FAO(OS) No.549/2011 is allowed for the reason the ground on which the learned Single Judge has granted the injunction i.e. *to avoid any bleak*

chances of misrepresentation, is no ground to grant an interim injunction and the learned Single Judge has applied a wrong principle of law to grant the limited injunction. The injunction granted by the learned Single Judge is vacated and IA No.8122/2011 filed by Radico Khaitan Ltd. is dismissed.

48. We refrain from imposing any costs.

(PRADEEP NANDRAJOG)
JUDGE

(S.P.GARG)
JUDGE

DECEMBER 20, 2011
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