

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR

IPDATM/210/2023

PEPSICO, INC (SR. NO. 50/2019/TM/KOL)
VS
JAGDAMBA FOODS PVT. LTD. AND ANR.

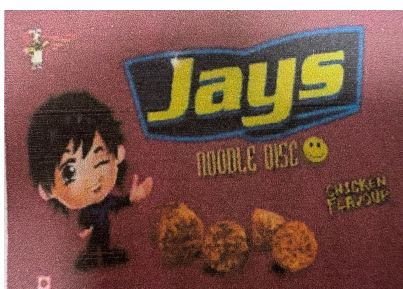
For the petitioner	: Mr. Varun Kothari, Advocate Ms. Urvashi Jain, Advocate
For the respondent no. 2	: Mr. Pramod Kumar Drolia, Advocate.
Heard on	: 03.11.2025, 10.11.2025
Judgment on	: 10.11.2025

Ravi Krishan Kapur, J.:

1. Despite service, the respondent no. 1 remained unrepresented even in the second call.
2. This is an application under section 47 read with section 57 of the Trademarks Act, 1999. The petitioner seeks cancellation of the registered mark  bearing no. 2921580 in Class 30.
3. Briefly, the petitioner is a reputed manufacturer and distributor of beverages and snack food products. Amongst the various products manufactured, sold and distributed by the petitioner are reputed brands such as LAY'S, CHEETOS, PEPSI, 7UP, MOUNTAIN DEW, AQUAFINA, RUFFLES, KURKURE, QUAKER, DORITOS etc.

4. Originally, as far back as in 1938, one Herman W. Lay adopted and commenced use of the distinctive mark LAY'S for potato chips. Thereafter in 1961, the Frito Company and H. W. Lay Company merged to form Frito-Lay Inc. which subsequently merged with Pepsi-Cola in 1965 to form PepsiCo. Inc.
5. The mark LAY'S has been used by the petitioner for more than 75 years. The products bearing the mark LAY'S have extensive sales all over the world and are being sold in India since 1965. The petitioner has also obtained registration of the LAY'S marks in India and in several other jurisdictions across the world. In India, the petitioner has been enjoying registration of the mark LAY'S which had been applied for on 31 July 1992. With the passage of time, the petitioner has also earned immense goodwill and brand equity insofar as the name LAY'S is concerned. By virtue of the long standing and extensive use of the petitioner's mark LAY'S both internationally and in India, the mark LAY'S has become distinctive and is exclusively associated with the petitioner and its product alone.
6. In or about 2015, the petitioner came to learn of the trademark application of the respondent no. 1 in respect of for the impugned mark JAY'S in Nepal. The respondent no. 1 is not carrying out any manufacturing activities in India and is carrying all manufacturing activities at Nepal. For convenience, the rival marks are set out below.

Impugned Mark



Petitioner's Mark



7. In *Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories* - AIR 1965 SC 980, it has been held as follows:

28. In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiffs and the defendants mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark would be immaterial.

8. In *K.R. Chinna Krishna Chettiar Versus Shri Ambal Co., Madras & Anr.* - (1969) 2 SCC 131, it has been held as follows:

6. The vital question in issue is whether, if the appellant's mark is used in a normal and fair manner in connection with the snuff and if similarly fair and normal user is assumed of the existing registered marks, will there be such a likelihood of deception that the mark ought not to be allowed to be registered (see In the matter of Broadhead's Application for registration of a trade mark). It is for the court to decide the question on a comparison of the competing marks as a whole and their distinctive and essential features. We have no doubt in our mind that if the proposed mark is used in a normal and fair manner the mark would come to be known by its distinguishing feature "Andal". There is a striking similarity and affinity of sound between the words "Andal" and "Ambal". Giving due weight to the judgment of the Registrar and bearing in mind the conclusions of the learned Single Judge and the Divisional Bench, we are satisfied that there is a real danger of confusion between the two marks.

7. There is no evidence of actual confusion, but that might be due to the fact that the appellant's trade is not of long standing. There is no visual resemblance between the two marks, but ocular comparison is not always the decisive test. The resemblance between the two marks must be considered with reference to the ear as well as the eye. There is a close affinity of sound between Ambal and Andal.

8. In the case of Coca-Cola Co. of Canada v. Pepsi Cola Co. of Canada Ltd., it was found that cola was in common use in Canada for naming the beverages. The distinguishing feature of the mark Coca Cola was coca and not cola. For the same reason the distinguishing feature of the mark Pepsi Cola was Pepsi and not cola. It was not likely that any-one would confuse the word Pepsi with coca. In the present case the word "Sri" may

be regarded as in common use. The distinguishing feature of the respondent's mark is Ambal while that of the appellant's mark is Andal. The two words are deceptively similar in sound.

9. The name Andal does not cease to be deceptively similar because it is used in conjunction with a pictorial device. The case of De Cordova & Ors. v. Vick Chemical Coy is instructive. From the Appendix printed at page 270 of the same volume it appears that Vick Chemical Coy were the proprietors of the registered trade-mark consisting of the word "Vaporub" and another registered trade-mark consisting of a design of which the words "Vicks Vaporub Salve" formed a part. The appendix at page 226 shows that the defendants advertised their ointment as 'Karsote vapour Rub'. It was held that the defendants had infringed the registered mark& Lord Radcliffe said: ". a mark is infringed by another trader if, even without using the whole of it upon or in connection with his goods, he uses one or more of its essential features.",

9. In *Dabur India Ltd. Vs. Usha Proprietor of RS Industries and Anr.* 2024 SCC

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12. From the averments made in the petition and the evidence on record, the petitioner has established that it is the prior registered proprietor and a prior user of the mark 'DABUR' since the year 1884. The adoption and

the use of the impugned trademark  by the respondent no.1, which is very similar to the trademark 'DABUR' of the petitioner, is likely to create confusion in the market.

13. Not only is the trademark of the respondent no.1 confusingly/deceptively similar to the petitioner's prior adopted, registered and well-known trademark 'DABUR' but the nature of the goods of the petitioner and the respondent no.1 are identical ie. 'all type of detergent, detergent cake, washing soap, washing powder, hygienic dishwash bar, liquid soap, cleaning powder, toilet soap and floor cleaner preparation, bleaching preparation' included in Class 3.

15. In view of the discussion above, it is clear that the impugned trademark has been adopted by the respondent no.1 dishonestly to trade upon the established goodwill and reputation of the petitioner and to project itself to be associated with the petitioner. Therefore, the continuation of the impugned registration on the Register of Trade Marks is in contravention of the provisions of Section 11 of the Act and is liable to be cancelled under Section 57 of the Act."

10. On a consideration of the above facts and circumstances, the impugned mark is phonetically identical and deceptively similar to the petitioner's mark LAY'S.

Both products are identical and in the same category of goods. The adoption and registration of the impugned mark is in violation of the Act and has been dishonestly adopted only for collateral purposes. Such registration is also in violation of section 9 and 11(b) of the Act. Admittedly, the petitioner is the prior user of the mark LAY'S. There is every chance of confusion and deception. There is no cause which the respondent has been able to demonstrate which would justify registration of the impugned mark. Moreover, the impugned mark has been adopted with malafide intent only to ride on the goodwill and reputation of the petitioner and it is in public interest that the same be cancelled.

11. In the above circumstances, the impugned registration is liable to be cancelled. IPDATM 210 of 2023 stands allowed. There shall be an order in terms of prayer (a) and (b) of the petition.

(RAVI KRISHAN KAPUR, J.)

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