

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

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR

IP-COM/63/2024
[OLD NO CS/145/2021]
IA NO: GA-COM/6/2025

AMIR BIRI FACTORY AND ORS.
VS
MR. RASHID ALI

For the petitioner : Mr. Sarosij Dasgupta, Adv.
Mr. Biswaroop Mukherjee, Adv.
Mr. Avijit Dey, Adv.

Heard on : 05.02.2026

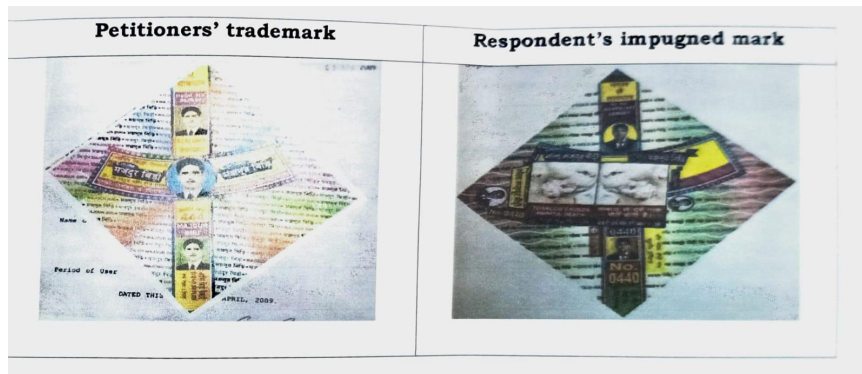
Judgment on : 05.02.2026

Ravi Krishan Kapur, J.:

1. This is an application for summary judgment under Order XIII-A of the Code of Civil Procedure, 1908. The application is taken up in the second call. Despite service, the respondent chooses to be unrepresented. Notwithstanding, the expiry of the statutory period under the Commercial Courts Act 2015, no Written Statement has been filed nor has the defendant entered appearance in the suit.
2. Briefly, both parties are engaged in the manufacture, sale and distribution of *biris* and allied products. In course of such business, the plaintiffs have adopted a distinctive packaging to distinguish their products from that of other manufacturers and have been selling the same under the brand name MAJDUR BIRI. The products of the petitioners are being sold in a particular stylized form having their own trade identity. The petitioners have been selling

their products continuously and uninterruptedly since 1979. All the goods sold by the petitioners have a distinctive label bearing a unique design, get-up and colour scheme.

3. The petitioners have also obtained registration of their trademark both under the Trademarks Act, 1999 and the Copyright Act, 1957 respectively. The petitioners have extensive sales and have incurred huge advertising expenses. In or about 2020, the petitioner came to learn of the respondent selling similar products under the brand name *Gold Mazdoor Biri* in class 34.
4. For convenience, the rival marks are set out below;



5. It is contended on behalf of the petitioners that the adoption of the impugned mark is deceptively similar and strikingly identical and there is every chance of misrepresentation, confusion and deception.
6. Upon an examination of the materials on record, it is evident that the respondent has deliberately adopted deceptively similar trademarks "GOLD MAZDOOR BIRI" and "GOLD MAZDOOR BIRI NO. 0440" to derive unlawful and illegal gain at the cost of the reputation and goodwill attached to the mark "MAJDUR BIRI" and/or "MAJDUR BIRI NO. 444" belonging to the petitioners. Both goods are similar and are sold through the same trade channels to the same class of customers. In such circumstances, there is

every likelihood of confusion and deception amongst the members of the trade as well as the general public.

7. It is a well settled that resemblances between two marks ought to be assessed both visually and phonetically i.e., by reference to the eye as well as the ear. A comparison of the two marks would make it evident that both are also phonetically similar. There is every likelihood of consumers being deceived. In deciding such questions, a Court approaches such issues from the viewpoint of a man of average intelligence and imperfect recollection. In such circumstances, the overall structural and phonetic similarity between the two marks are deceptively identical and likely to cause confusion and deception.
8. It is also obvious that the defendant is not serious in defending this proceeding. Ordinarily, a summary judgment can be passed at any stage of the proceedings if the Court finds that the defendant has no real intention of defending the claim. There is no requirement nor necessity of oral evidence being led if the plaintiff has otherwise proved its case and the suit may be disposed of by way of a summary judgment. In *Kamal Kumar Hirawat v. Maruti Poly Films & Ors.*, (Unreported decision dated 10th June, 2025 passed by the Calcutta High Court in IP-COM/ 15/2024), it has been held that:

“It is also obvious that the defendants are not seriously in defending this proceeding. A summary judgment can be passed at any stage of the proceedings if the Court finds that the defendant has no real intent of defending the claim. There is no requirement nor necessity of oral evidence being led and the suit should be disposed of by way of a summary judgment as prayed for in the suit. In such circumstances, reference may be had to the following decisions: Make My Trip (India) (P) Ltd. v. Owners of <https://www.makemytripmood.com> : 2022 SCC OnLine Del 4105, paras. 24 to 26, 28 to 30, 32], Sun Parma v. Mylan Laboratories : 2023 SCC OnLine Del 4661: (2024) 98 PTC 157, paras. 10 to 12, 16, 17, Sandisk LLC v. Amit & Ors. : 2023 SCC OnLine Del 2060, paras. 6, 12 to 19 and Syrma Technology Pvt. Ltd. vs. Powerwave Technologies Sweden Ad. It is a well settled law that resemblance between two marks ought to be assessed both visually and phonetically i.e., by reference to the eye as well as the ear. A comparison of

the two marks would make it evident that both are phonetically similar. There is every likelihood of third parties being deceived. In deciding such questions, the Court should approach such issues from the viewpoint of a man of average intelligence and imperfect recollection. Ordinarily, the beginning of a word is often the most crucial for assessing phonetic similarity and likelihood of confusion. However, in this case, the overall 5 structural and phonetic similarity between the two marks are deceptively identical and likely to cause confusion and deception.”

9. Similarly, in the case of *Make My Trip (India) (P) Ltd. v. Owners of https www.makemytripmood.com*: 2022 SCC OnLine Del 4105, it has been held as follows:

“24. The plaintiff is the registered proprietor of the mark “MakeMyTrip” and its various formative marks. The plaintiff has also been able to establish the goodwill and reputation attached to the plaintiff’s “MakeMyTrip Marks” in India.

25. The domain name <www.makemytripmood.com> of Defendant 1 is deceptively similar to the plaintiff’s registered domain name <www.makemytrip.com>, which is likely to deceive an unwary consumer. This Court in Anugya Gupta v. Ajay Kumar [Anugya Gupta v. Ajay Kumar, 2022 SCC OnLine Del 1922] , has held that the right of a proprietor in a domain name is entitled to equal protection, applying the principles of the trade mark law. The use of the same or similar domain name may lead to diversion of users, which could result from such users mistakenly accessing one domain name instead of another. Therefore, a domain name may have all the characteristics of a trade mark and could find an action for passing off.

26. In Reddy’s Laboratories Ltd. v. Manu Kosuri [Reddy’s Laboratories Ltd. v. Manu Kosuri, 2001 SCC OnLine Del 222] , this Court has held as under:

“7. It is a settled legal position that when a defendant does business under a name which is sufficiently close to the name under which the plaintiff is trading and that name has acquired a reputation the public at large is likely to be misled that the defendant’s business is the business of the plaintiff or is a branch or department of the plaintiff the defendant is liable for an action in passing off and it is always not necessary that there must be in existence goods of the plaintiff with which the defendant seeks to confuse his own domain name passing off may occur in cases where the plaintiffs do not in fact deal with the offending goods. When the plaintiffs and defendants are engaged in common or overlapping fields of activity, the competition would take place and there is grave and immense possibility for confusion and deception and, therefore, there is probability of sufferance of damage. Plaintiff and defendants are operating on the website. The domain name serve same function as the trade mark and is not a mere address or like finding number of the internet and, therefore, plaintiff is entitled to equal protection as trade mark. The domain name is more than a mere internet address for it also identifies the internet site to those who reach it. In an internet service, a particular internet site could be reached by anyone anywhere in the world who proposes to visit the said internet site. In a matter where services rendered through the domain name in the internet, a very alert vigil is necessary and a strict view needs to be taken for its easy access and reach by anyone from any corner of the world.”

28. In the present case, Defendants 1, 7 and 8, who are the only contesting defendants in the suit, have chosen neither to file their written statement nor have they entered appearance in the suit to defend the same. In my opinion, therefore, this is a fit case where a summary judgment in terms of

Order 13-ACPC, as applicable to commercial disputes of a specified value, read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022 deserves to be passed in favour of the plaintiff and against Defendants 1, 7 and 8.

29. *In Su-Kam Power Systems Ltd. v. Kunwer Sachdev [Su-Kam Power Systems Ltd. v. Kunwer Sachdev, 2019 SCC OnLine Del 10764] , this Court has held as under:*

“90. To reiterate, the intent behind incorporating the summary judgment procedure in the Commercial Courts Act, 2015 is to ensure disposal of commercial disputes in a time-bound manner. In fact, the applicability of Order 13-ACPC to commercial disputes, demonstrates that the trial is no longer the default procedure/norm.

91. Rule 3 of Order 13-ACPC, as applicable to commercial disputes, empowers the court to grant a summary judgment against the defendant where the court considers that the defendant has no real prospects of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The expression ‘real’ directs the court to examine whether there is a ‘realistic’ as opposed to ‘fanciful’ prospects of success. This Court is of the view that the expression ‘no genuine issue requiring a trial’ in Ontario Rules of Civil Procedure and ‘no other compelling reason... for trial’ in Commercial Courts Act can be read mutatis mutandis. Consequently, Order 13-ACPC would be attracted if the court, while hearing such an application, can make the necessary finding of fact, apply the law to the facts and the same is a proportionate, more expeditious and less expensive means of achieving a fair and just result.

92. Accordingly, unlike ordinary suits, courts need not hold trial in commercial suits, even if there are disputed questions of fact as held by the Canadian Supreme Court in Robert Hryniak v. Fred Mauldin [Robert Hryniak v. Fred Mauldin, 2014 SCC OnLine Can SC 53] , in the event, the court comes to the conclusion that the defendant lacks a real prospect of successfully defending the claim.”

30. *Applying the above principles, in my opinion, no useful purpose would be served in insisting upon the plaintiff to file its affidavits of ex parte evidence. This is a fit case where a summary judgment deserves to be passed in favour of the plaintiff and against Defendants 1, 7 and 8.”*

10. In view of the above, the petitioners have been able to demonstrate a strong case on merits. The balance of convenience and irreparable injury is also in favour of orders being passed as prayed for therein.

11. In such circumstances, there shall be an order in terms of prayers (a), (c) and (g) of the plaint. The defendant is directed to take necessary steps for delivery up and cancellation of all cash memos, bills, challans, invoices, vouchers etc. bearing the impugned mark "GOLD MAZDOOR BIRI" and/or "GOLD MAZDOOR BIRI NO. 0440" or any mark which is identical or deceptively similar to the petitioners "MAJDUR BIRI" mark.

12. With the above directions, GA-COM/6/2025 stands allowed. The suit is decreed in terms of prayers (a), (c) and (g) of the plaint. As a consequence, IP-COM 63 of 2024 stands disposed of.
13. The Department is directed to take necessary steps for drawing up of the decree expeditiously.

(RAVI KRISHAN KAPUR, J.)

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