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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 08.05.2026+ **CS(COMM) 905/2024**

DANONE ASIA PACIFIC HOLDINGS PTE. LTD.Plaintiff

Through: Mr. Krishna V.S., Advocate.

versus

M/S ROCKWELL PHARMACEUTICALS & ORS.Defendants

Through: None.

CORAM:**HON'BLE MR. JUSTICE TEJAS KARIA****TEJAS KARIA, J. (ORAL)****I.A. 12915/2026**

1. This Application has been filed on behalf of the Plaintiff under Order XIII A of the Code of Civil Procedure, 1908 (“CPC”) seeking Summary Judgment against Defendant Nos. 1, 3, 4, 5 and 6.
2. The present Suit has been filed by the Plaintiff, *inter alia*, seeking permanent injunction restraining the Defendants from infringement of the Plaintiff’s Trade Mark and passing off.
3. *Vide* order dated 16.10.2024, this Court granted injunction restraining Defendant Nos. 1 to 3 from using the Mark ‘PROTEX’ (“**Impugned Mark No. 1**”), and Defendant Nos. 4 to 6 from using the Mark ‘PROTRILEX’ (“**Impugned Mark No. 2**”), or any other Mark that is deceptively similar to



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the Plaintiff's registered Mark 'PROTINEX' ('**Plaintiff's Mark**'). Further, the Court issued summons to the Defendants in the present Suit.

4. *Vide* order dated 28.02.2025, this Court issued fresh summons to the Defendants through all permissible modes, upon the Plaintiff taking requisite steps.

5. *Vide* order dated 08.08.2025, the learned Joint Registrar observed that the affidavit of service dated 21.04.2025 records that service of summons on Defendant No. 1 had been effected on 19.04.2025, and another affidavit of service dated 10.03.2025 records that Defendant Nos. 5 and 6 were served on 01.03.2025. Further, it was also observed that *vide* order dated 20.02.2025, it was recorded that Defendant No. 3 and 4 were served on 28.10.2024.

6. *Vide* order dated 14.10.2025, the learned Joint Registrar allowed I.A. No. 25624/2025 filed on behalf of the Plaintiff under Order I Rule 10(2) of the CPC, thereby deleting Defendant No. 2 from the array of Parties. It was further recorded that Defendant No. 1 was served with summons on 19.04.2025, Defendant Nos. 3 and 4 on 28.10.2024 and Defendant Nos. 5 and 6 on 01.03.2025. It was also observed that since the maximum permissible period to file the Written Statement on behalf of Defendant Nos. 1, 3, 4, 5 and 6 had expired, their right to file their Written Statement stood closed.

7. *Vide* order dated 09.12.2025, this Court observed that none had appeared on behalf of Defendant Nos. 1, 3, 4, 5 and 6, and, therefore, the said Defendants were proceeded *ex-parte*.

8. *Vide* order dated 27.04.2026, it was recorded that the learned Counsel for the Plaintiff had sought time to file an appropriate application seeking



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summary judgment, which was granted by the Court. Accordingly, the present Application has been filed by the Plaintiff.

9. The learned Counsel for the Plaintiff advanced the following submissions:

9.1. The Plaintiff is a part of the Danone Group of Companies, which have their origin from the year 1896. Currently, the Danone Group conducts business in over 120 countries and is one of the world's foremost players in the specialized nutrition market as well as in the dairy and plant-based products market.

9.2. The Plaintiff is the registered owner of the Plaintiff's Mark, which has continuously been used by the Plaintiff and its predecessors in India since 1957. The Plaintiff also possesses statutory rights for the exclusive use of the Plaintiff's Mark owing to the registration obtained by the Plaintiff in relevant Classes, the details of which are as under:

Sl. No.	Trademark	Application No.	Class	Date of Application	Status	Valid upto
1.	PROTINEX (word)	178482	05	15.02.1957	Registered	15.02.2026
2.	PROTINEX (word)	275091	30	20.09.1971	Registered	20.09.2026
3.	PROTINEX (word)	1274688	29	24.03.2004	Registered	24.03.2034
4.	PROTINEX (word)	1467423	29	06.07.2006	Registered	06.07.2026
5.	PROTINEX (word)	1467424	30	06.07.2006	Registered	06.07.2026
6.	PROTINEX (word)	1472293	05	24.07.2006	Registered	24.07.2026
7.	PROTINEX	1472292	30	24.07.2006	Registered	24.07.2026

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	(word)					
8.	PROTINEX BYTES (word)	3577275	05 & 30	23.06.2017	Registered	23.06.2027
9.		5684347	05	16.11.2022	Registered	16.11.2032
10.		5684345	05	16.11.2022	Registered	16.11.2032
11.		5684346	05	16.11.2022	Pending Registration	-
12.		5684348	05	16.11.2022	Registered	16.11.2032

9.3. The Plaintiff's product bearing the Plaintiff's Mark is a scientifically formulated protein supplement developed to address widespread protein deficiency and is marketed in multiple variants, catering to different age groups and nutritional needs. Due to its continued and sustained presence, consistent promotional efforts and extensive product portfolio,

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the brand has acquired significant recognition amongst consumers and healthcare professionals in India.

- 9.4. The products bearing the Plaintiff's Mark are extensively manufactured by the Plaintiff, which is reflected in the table below:

Year	No. of Packs	Quantity (in Metric Tons)
2009	5,427,324	1,261
2010	5,712,972	1,327
2011	6,013,654	1,397
2012	6,681,837	1,552
2013	7,424,263	1,725
2014	8,666,364	1,768
2015	9,949,636	2,371
2016	9,561,453	2,676
2017	11,526,831	3,104
2018	11,133,492	3,128
2019	9,496,712	2,538

- 9.5. The Plaintiff has consistently promoted and expanded the Plaintiff's Mark through successful product launches and continuous innovation tailored according to the evolving consumer requirements. Multiple products launched under the Plaintiff's Mark have received industry recognition and awards from various reputed organizations, thereby evidencing the strong market presence and goodwill of the Plaintiff's products bearing the Plaintiff's Mark.

- 9.6. The Plaintiff's products bearing the Plaintiff's Mark have achieved significant commercial success. The Plaintiff has invested considerably in advertising, publicity, marketing initiatives which include digital outreach, trade journal



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coverage, dedicated websites and celebrity endorsements, thereby significantly enhancing the goodwill associated with the Plaintiff's Mark and its products sold thereunder.

- 9.7. In the month of September 2024, the Plaintiff came across the products bearing Impugned Mark No. 1. Upon examination of the products bearing Impugned Mark No. 1, the Plaintiff came to know that the said products were being marketed by Defendant No. 1 and were manufactured by Defendant No. 4.
- 9.8. Thereafter, the Plaintiff conducted an investigation which revealed that Defendant No. 1 through interconnected proprietorship entities, had been marketing nutritional products bearing the Impugned Marks in various markets for several years. Such products were earlier manufactured by Defendant Nos. 4 to 6 and were being manufactured at a facility set up by Defendant No. 1 at the time of the institution of the Suit. Defendant No. 4, whose directors are Defendant Nos. 5 and 6, manufactures and sells products bearing Impugned Mark No. 2 through online platforms and also its own website.
- 9.9. The Plaintiff had earlier instituted CS(COMM) No. 306/2020 before this Court against entities owned / operated by Defendant Nos. 4 to 6 for the use of a deceptively similar Mark 'PROTILEX' in relation to identical goods as that of the Plaintiff's. In the said proceedings, a decree dated 07.04.2022 was issued pursuant to a settlement agreement dated 06.09.2021, wherein the said Defendants agreed to bind themselves to be restrained from infringing the Plaintiff's



Mark. Therefore, the continuous infringing acts of the said Defendants in the present Suit are in violation of the said decree issued by the Court.

9.10. The Defendants have dishonestly adopted and used the Impugned Marks, which are phonetically and deceptively similar to the Plaintiff's Mark, in relation to identical goods, i.e., protein supplements. Such adoption has been made by the Defendants with full knowledge of the Plaintiff's rights in the Plaintiff's Mark.

9.11. The minor and cosmetic variations introduced by the Defendants in the Impugned Marks do not mitigate the likelihood of confusion and clearly demonstrates a *mala fide* intent to ride upon the goodwill and reputation associated with the Plaintiff's Mark. A comparison of the Plaintiff's Mark and the Impugned Marks is as under:

PLAINTIFF'S MARK	IMPUGNED MARKS
PRO <u>TIN</u> EX	PRO <u>T</u> EX Used by Proprietor of Defendant Nos. 1 to 3
PRO <u>TIN</u> EX	PRO <u>TRI</u> LEX Used by Defendant Nos. 4 to 6

9.12. In the Impugned Marks, the Defendants have merely replaced the highlighted letters as evident from the table above, thereby clearly dishonestly adopting phonetically, structurally and visually similar / identical Marks. Therefore, there is a clearly likelihood of confusion amongst consumers that there is an association between the Defendants' goods and the Plaintiff.



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9.13. There is no real prospect of the Defendants successfully defending their claims. The Plaintiff has taken effective steps to ensure service of summons upon the Defendants, the status of which is as under:

S. No.	Defendant	Date of receipt of summons
1)	Defendant No.1	19.04.2025
2)	Defendant No.3	28.10.2024
3)	Defendant No.4	28.10.2024
4)	Defendant No.5	01.03.2025
5)	Defendant No.6	01.03.2025

9.14. Defendant Nos. 1, 3, 4, 5 and 6 have failed to file their Written Statements within the statutorily prescribed time limit despite due service. Therefore, their right to file the Written Statement stood forfeited due to the expiry of the prescribed period, which was recorded by this Court *vide* order dated 14.10.2025.

9.15. The issues arising in the present Suit are capable of adjudication solely on the basis of undisputed documentary evidence that have already been placed on record, evidencing long and continuous use in addition to the registration of the Plaintiff's Mark. Therefore, proceeding to trial in such circumstances would only result in unwarranted delay in the present Suit.

10. In the present case, Defendant Nos. 1, 3, 4, 5 and 6 have failed to enter appearance or raise any defence despite due service of summons, and their right to file written statements stands closed in terms of the order dated 14.10.2025. By the same order, Defendant No. 2 was deleted from the array



of parties. Thereafter, vide order dated 09.12.2025, this Court recorded that none appeared on behalf of the aforesaid Defendants and, accordingly, they were proceeded against *ex parte*.

11. In Inter ***Ikea Systems BV v. Imtiaz Ahamed***, 2016 SCC OnLine Del 6717, this Court observed as under:

“20. The court is mindful of the fact that in such a situation where the defendant chooses to stay away from the court proceedings, he should not be permitted to enjoy the benefits of such an evasion. Any view to the contrary would result in a situation where a compliant defendant who appears in court pursuant to summons being issued, participates in the proceedings and submits his account books, etc., for assessment of damages, would end up on a worse footing, vis-a-vis a defendant who chooses to conveniently stay away after being served with the summons in the suit. That was certainly not the intention of the Statute. Section 135(1) of the Trademarks Act, 1999 provides that relief that may be granted in any suit for infringement of or for passing off includes injunction and at the option of the plaintiff, either damages or an account of profits. The plaintiffs in the present case have opted for claiming damages and have established beyond doubt that they have suffered damages on account of the conduct of the defendants which are a result of infringement of their trademark and copyright.”

12. In the facts of the present case, no useful purpose would be served by directing the matter to proceed to trial, particularly when no defence has been raised on behalf of Defendant Nos. 1, 3, 4, 5 and 6. Having regard to the facts and circumstances of the case, as well as the documentary material already placed on record, the said Defendants do not appear to have any real prospect of successfully defending the present Suit.

13. In ***Under Armour Inc. v. Anish Agarwal***, 2025 SCC OnLine Del 3784, the Division Bench of this Court held that where a customer, even for a brief period, associates the impugned marks with the plaintiff's marks,



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infringement would stand attracted. It was further held that the Initial Interest Confusion Test proceeds on the principle that even if confusion is caused only at the initial stage, the same is sufficient to satisfy the requirement of deceptive similarity under Section 29 of the Trade Marks Act, 1999.

14. On the basis of the documents placed on record, it is evident that the Plaintiff is the registered proprietor of the Plaintiff's Mark and has acquired substantial goodwill and reputation in respect of the products sold thereunder. A comparison of the Plaintiff's Mark with the Impugned Marks, as set out hereinabove, clearly demonstrates that, the Defendants have merely omitted the letters 'IN' from the Plaintiff's Mark 'PROTINEX' to devise Impugned Mark No. 1, namely 'PROTEX'; and by adding the letter 'R' and substituting the letter 'N' in the Plaintiff's Mark with the letter 'L', the Defendants have devised Impugned Mark No. 2.

15. Accordingly, this Court is of the view that the Impugned Marks are deceptively similar to the Plaintiff's Mark, having regard to the evident structural, visual and phonetic similarity between the competing marks. There is, therefore, a clear likelihood of confusion and association in the minds of members of the trade and the public that the Defendants' products bearing the Impugned Marks originate from, or are connected with, the Plaintiff.

16. In view of the aforesaid, and bearing in mind the dishonest adoption and use by the Defendants of the Impugned Marks, which are deceptively similar to the Plaintiff's Mark, with a view to deriving unfair advantage from and riding upon the goodwill and reputation of the Plaintiff, the present Application for passing Summary Judgement deserves to be allowed.



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17. Accordingly, the present Application is allowed.

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18. In view of the order passed in I.A. 12915/2026, the present Suit is decreed in favour of the Plaintiff and against Defendant Nos. 1, 3, 4, 5 and 6 in terms of the prayers contained in Paragraph No. 125(a) to (e) of the Suit.

19. Let the Decree Sheet be drawn up accordingly.

20. The present Suit, along with pending Application(s), if any, stands disposed of.

21. The next date of 20.05.2026 stands cancelled.

TEJAS KARIA, J

MAY 8, 2026/sms