If plaintiff is the prior user and prior registered proprietor of an inherently distinctive mark, and defendant subsequently adopts a mark that is phonetically, structurally and visually similar for allied and cognate goods sold through identical trade channels, a prima facie case of deceptive similarity and likelihood of confusion is made out

The **Delhi High Court** in the case of **Flipkart India vs Marc Enterprises [FAO-IPD 46/2021] dated April 10, 2026**, has held that where Marc Enterprises (respondent) is the prior user and prior registered proprietor of an inherently distinctive mark, and Flipkart India (appellant) subsequently adopts a mark that is phonetically, structurally and visually similar for allied and cognate goods sold through identical trade channels, a prima facie case of deceptive similarity and likelihood of confusion is made out.

In such circumstances, the use of a house mark alongside the impugned mark does not by itself obviate infringement or passing off, and the appellate court will not interfere with an order granting interim injunction unless the Trial Court's exercise of discretion is shown to be perverse or manifestly erroneous.

The Court observed that in an appeal against an interim injunction, the appellate court is confined to examining whether the discretion exercised by the Trial Court is perverse or legally indefensible, and cannot substitute its own view merely because another view is possible. Interference is permissible only where the decision is one that no reasonable person, applying the relevant facts and law, could have reached.

The Court observed that the respondent is the admitted prior user of the mark "MARC", with user claim since 1981 and first registration in 1984, whereas the appellant adopted the impugned marks only in 2017 for large electronic items. The Court further observed that the respondent had established that "MARC" is a uniquely coined term, inherently distinctive, and that the goods in question are covered by the respondent's registrations.

The Court found that "MARC" and "MARQ" are nearly identical and deceptively similar, and that an average consumer of average intelligence and imperfect recollection is likely to be confused between the competing marks. The marks were held to be phonetically, structurally and visually similar, and the fact that the appellant sold its goods exclusively through an e-commerce platform did not negate the relevance of phonetic similarity or the likelihood of confusion.

The Court further held that, applying the anti-dissection rule, the rival marks when compared as a whole are deceptively similar. Mere addition of the house mark "Flipkart" was held insufficient to eliminate the likelihood of confusion, particularly when the house mark appeared in a miniscule manner and in some instances was not used at all with the impugned mark. The Court also rejected the plea that "MARC", "MARK" or "MAR" were common to trade, holding that common to register does not establish common to trade unless substantial usage by other persons is proved.

Lastly, the Court pointed out that the respondent's products were offered on the appellant's platform, while the appellant's products were sold exclusively through the same platform, showing identical trade channels, overlapping customer base, and allied and cognate goods. It also held that later registration obtained by the appellant for “Flipkart MarQ” in Class 7 and “MarQ by Flipkart” in Class 42 after the impugned order did not affect the injunction in the present case, especially as no such registration existed when the impugned order was passed and the Class 42 registration did not pertain to the products in question.