

Similarity between rival marks must be judged on an overall impression and not by dissecting the marks into separate syllables or components. Under Section 11(2), the issue is not confined to consumer confusion, rather, the focus is on protection of the reputation and distinctiveness of the earlier well-known mark against dilution, unfair advantage and detriment, even where the later mark is sought to be registered for dissimilar goods

The **Delhi High Court** in the case of **Industria De Diseno Textil, S.A. vs Registrar of Trade Marks [C.A.(COMM.IPD-TM) 52/2024]** dated **July 06, 2026**, has held that similarity between rival marks must be judged on an overall impression and not by dissecting the marks into separate syllables or components. Applying that test, “ZARA” and “ZORA” were held to be deceptively similar phonetically and visually. Additionally, the Court emphasised that under Section 11(2), the issue is not confined to consumer confusion in the classic Section 11(1) sense. The focus is on protection of the reputation and distinctiveness of the earlier well-known mark against dilution, unfair advantage and detriment, even where the later mark is sought to be registered for dissimilar goods.

The Court first examined Section 11 of the Trade Marks Act and made an important distinction between Section 11(1) and Section 11(2). It observed that Section 11(1) is concerned with likelihood of confusion in cases involving similar or identical goods/services, whereas Section 11(2) protects an earlier well-known mark even against dissimilar goods if use of the later mark would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier mark.

On the issue whether a mark must be formally declared “well-known” before Section 11(2) can be invoked, the Court held that Section 11(2) does not require a prior formal declaration by a court or inclusion in the Registrar’s list of well-known marks. What is required is that the earlier mark should, on the evidence, be entitled to protection as a well-known mark in India under Section 2(1)(zg) read with Section 11(6) and Explanation (b) to Section 11.

Applying that principle, the Court found that the evidence on record clearly showed that “ZARA” had immense reputation, substantial Indian and international presence, extensive sales, advertising, diversified product lines, and prior judicial recognition as a well-known mark. The Court therefore held that “ZARA” was entitled to protection as a well-known mark under Section 11(2), regardless of whether there had been a separate formal declaration process.

The Court then held that the Registrar had applied the wrong legal test while comparing “ZARA” and “ZORA”. It said that rival marks must be compared as a whole and not by dissecting them into parts such as “ZA” and “ZO”. The Court found that both marks are four-letter word marks, begin with “Z”, end with “RA”, have the same consonant structure, and produce a similar overall phonetic impression. The difference of one vowel was held insufficient to avoid deceptive similarity, particularly from the perspective of a person of average intelligence and imperfect recollection.

The Court further observed that once Section 11(2) is attracted, the respondent's argument on dissimilarity of goods loses much of its force, because a well-known mark is protected even against dissimilar goods. Even otherwise, the Court noted that both marks were in Class 24 and there was a connection in the course of trade, as ZARA's brand presence extended beyond end-consumers to manufacturers, traders and suppliers dealing in textiles, bags and related products.

The High Court also held that the Registrar wrongly looked for proof of actual public confusion. It clarified that actual confusion is not the controlling test under Section 11(2). The proper enquiry under that provision is whether the later mark, used without due cause, would take unfair advantage of or harm the distinctive character or reputation of the earlier well-known mark. The Court found that use of "ZORA" would dilute and blur the distinctiveness of "ZARA" and would wrongly suggest a trade connection with the appellant's brand.

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