

Marks obtained by minor alterations to a registered trade mark, such as omission or substitution of letters, may still be deceptively similar if they retain structural, visual, and phonetic similarity so as to cause likelihood of confusion, and even initial interest confusion is sufficient to attract infringement

The **Delhi High Court** in the case of **Danone Asia Pacific Holdings vs Rockwell Pharmaceuticals [CS(COMM) 905/2024]** dated **May 08, 2026**, has held that where, in a trade mark infringement action, the plaintiff establishes registration, goodwill, and deceptive similarity between the rival marks on the basis of undisputed documentary evidence, and the served defendants neither appear nor file their written statements within the prescribed period, the Court may grant summary judgment under Order XIII-A CPC if the defendants have no real prospect of successfully defending the suit.

The Court further held that marks obtained by minor alterations to a registered trade mark, such as omission or substitution of letters, may still be deceptively similar if they retain structural, visual, and phonetic similarity so as to cause likelihood of confusion or association among consumers; and even initial interest confusion is sufficient to attract infringement under Section 29 of the Trade Marks Act, 1999.

The Court observed that defendant nos. 1, 3, 4, 5 and 6 had failed to enter appearance or raise any defence despite due service of summons, and their right to file written statements had already been closed. In these circumstances, and in light of the documentary material placed on record, the Single Judge held that no useful purpose would be served by sending the matter to trial, particularly when no defence had been raised and the defendants did not appear to have any real prospect of successfully defending the suit.

The Court took note of the plaintiff's registration and goodwill in the mark "PROTINEX" and compared the competing marks. It observed that "PROTEX" had been devised by merely omitting the letters "IN" from "PROTINEX," and "PROTRILEX" had been devised by adding the letter "R" and substituting the letter "N" with "L." On that comparison, the Court held that the impugned marks were deceptively similar to the plaintiff's mark and bore structural, visual and phonetic similarity sufficient to create likelihood of confusion and association in the minds of the trade and public.

The Court further observed that the defendants' adoption and use of the impugned marks was dishonest and mala fide, intended to derive unfair advantage from and ride upon the goodwill and reputation attached to the plaintiff's mark. Reference was made to *Under Armour Inc. v. Anish Agarwal* [2025 SCC OnLine Del 3784], to reiterate that even confusion at the initial stage is sufficient to attract infringement under Section 29 of the Trade Marks Act, 1999.

The Court also referred to *Inter Ikea Systems BV v. Imtiaz Ahamed* [2016 SCC OnLine Del 6717], to observe that a defendant who chooses to stay away from proceedings should not be permitted to benefit from such evasion, and that in an appropriate case relief for infringement

can be granted on the basis of the material on record. Applying that approach, the Bench found the present case fit for summary judgment under Order XIII-A CPC.