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

\+ CS(COMM) 395/2023 & I.A. No. 37843/2024

ALLIED BLENDERS AND DISTILLERS LIMITED .....Plaintiff

Through: Mr. Pravin Anand with Mr. Shrawan Chopra, Mr. Achyut Tewari and Mr. Aayush Maheshwari, Advocates. (M): 8604633567

versus

BOUTIQUE SPIRIT BRANDS PRIVATE LIMITED .....Defendant

Through: None.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

O R D E R

% 10.02.2025

MINI PUSHKARNA, J (*ORAL*)

I.A. 37843/2024 (Application under Order XIII-A read with Order VIII Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 ("CPC")

1. The plaintiff has filed the present suit seeking an order of permanent injunction restraining the defendant from using the goods with the impugned mark "**BSB MYRON**" or any other identical/deceptively similar marks thereto, amounting to infringement of the plaintiff's trademark "**KYRON**".

2. The case as set up by the plaintiff, in the plaint is as follow:

2.1 The plaintiff is in the business of *inter alia* manufacturing and marketing alcoholic beverages, including Indian Made Foreign Liquor ("IMFL"). The alcoholic beverages are sold by the plaintiff under various distinctive trademarks and labels, most of which have been registered by the plaintiff.

2.2 The plaintiff coined and adopted the word "**KYRON**" in the year 2010 and has been using the same continuously and extensively since the year 2012, for which the plaintiff holds registrations in Classes 9, 32 and 33.

2.3 The plaintiff has been exporting its products under the "**KYRON**" mark to countries like Bahrain, South Africa, Sudan, Ghana, UAE, etc., which constitutes the use of the mark in India under Section 56 of the Trade Marks Act, 1999.

2.4 The trademark "**KYRON**" enjoys an unparalleled reputation and goodwill in the market and even serves as a source identifier of the plaintiff's brandy products both in India and abroad.

2.5 The "**KYRON**" trademark is unique to the plaintiff, its products and business, and has acquired a secondary meaning by virtue of continuous and extensive use and promotion ever since it was first adopted by the plaintiff in 2010, and has therefore, come to be associated exclusively with the plaintiff.

2.6 The defendant is believed to be engaged in the business of blending and bottling of liquor brands and is advertising a wide range of products and allied services pertaining to manufacturing branded alcoholic beverages by means of their own interactive website, http://www.boutiquespiritbrands.com/index.php.

2.7 The plaintiff, in March 2023, learned through its sales team that the defendant had launched brandy under the impugned mark "**MYRON**" in October 2021 in Kerala. Upon further enquiries it was revealed that the defendant had also registered trademarks "**BSB MYRON**" in Class 32 bearing registration no. 4544212 and in Class 33, bearing registration no. 4544211in June 2020.

2.8 The defendant's mark "**MYRON**" is a blatant and substantial reproduction of and is deceptively similar to the plaintiff's "**KYRON**" trademarks and is infringing the plaintiff's trademarks, therein. The defendant is dealing in alcoholic beverages and is using the impugned mark for identical goods, i.e., Brandy, specially 'French Brandy' as that of the plaintiff.

2.9 The defendant in the impugned mark has quite obviously, substantially reproduced the very nuance of the plaintiff's "**KYRON**" mark. The word "**MYRON**" is also pronounced much like the word "**KYRON**" and, thus, adds to the possibility of confusion between the marks for an average consumer, considering both the competing products are marketed as French Brandies.

2.10. The defendant has expended no time, money, or effort to come up with the impugned mark, and has simply chosen to slavishly reproduce the plaintiff's original, unique, arbitrary, and distinct mark for its own inferior products.

2.11. The defendant's adoption of the impugned trademark amounts to a misrepresentation to the public and members of the trade, as they might believe that there is some sort of affiliation/association between the defendant's impugned mark with that of the plaintiff's trademark "**KYRON**".

2.12. While the defendant has registered the mark "**BSB MYRON**" in Classes 32 and 33, its manner of use of the said mark is only as "**MYRON**". The acronym "**BSB**" has been rendered inconspicuous owing to its reduced font size.

2.13. The product of the defendant will only be recognized as "Myron" being the dominant part of the mark through which consumer recall will be

associated, and not "**BSB MYRON**". Moreover, the defendant on its website does not advertise the product as "**BSB MYRON**" but only "**MYRON**".

2.14. The plaintiff is suffering loss of distinctiveness and exclusivity attached to the said trademarks, by reducing its capacity to identify and distinguish the business of the plaintiff as originating from a particular source, regardless of the presence or absence of likelihood of confusion.

2.15. Thus, being aggrieved by the defendant's adoption of the registered trademark of the plaintiff and owing to the unauthorised use of the trademark "**MYRON**" by the defendant, the present suit has come to be filed.

3. This Court vide order dated 01st June 2023 granted an *ex parte ad interim* injunction in favor of the plaintiff, thereby, restraining the defendant from using the mark "**MYRON**", "**BSB MYRON**" or any other mark which includes the word "**MYRON**", for IMFL or any other allied or cognate goods.

4. Summons in the suit were issued on 01st June 2023. This Court had also directed the summons to be additionally served *Dasti* on the defendant. Subsequently, since the defendant remained un-served, substituted service was affected on the defendant by e-mail, affixation, and publication in English and Hindi newspaper. However, since the defendant remained unrepresented, despite substituted service, the *ex parte ad interim* order dated 01st June, 2023 was made absolute by this Court *vide* order dated 18th December, 2023.

5. Thereafter, *vide* order dated 01st March, 2024, right of the defendant to file the written statement, was closed, since no written statement was filed, despite lapse of the statutory period for filing the same.

6. Consequently, since none appeared for the defendant, and since the statutory period to file the written statement had also expired, the present application being ***I.A. 37843/2024***, seeking a summary judgment, has come to be filed.

7. Further, the plaintiff has also filed two rectification petitions seeking cancellation of defendant's mark bearing registration no. 4544212 in Class 32 and registration no. 4544211 in Class 33, for the mark, "**BSB MYRON**". By today's order, the registrations of the aforesaid marks in favour of the defendant, has been cancelled in the rectification petitions filed by the plaintiff herein.

8. Learned counsel appearing for the plaintiff has made detailed submissions before this Court and has relied upon various documents in support of the claim of infringement of its trademark and the unauthorised use, thereof.

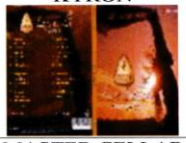
9. I have heard learned counsel appearing for the plaintiff and have perused the record.

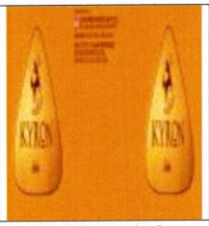
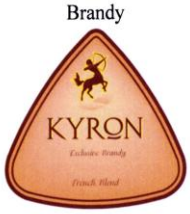
10. At the outset, this Court notes that the earliest registration of the plaintiff for the mark, 'KYRON' in Class 32 dates back to the year 2012, dated 7th July, 2012. Further, the earliest registration of the plaintiff for the mark KYRON in Class 33, also dates back to the year 2012, dated 1st May, 2012.

11. On the other hand, the application of the defendant for registration of the mark, 'BSB MYRON' in Class 32 under registration no. 4544212, is dated 25th June, 2020, on a *'proposed to be used'* basis. Likewise, the date of the application for registration of the mark in favour of the defendant under registration no. 4544211 in Class 33, is dated 25th June, 2020, on a *'proposed to be used'* basis.

12. It is also to be noted that the plaintiff has placed on record several documents, i.e. CA Certificates dated 24th May, 2023 showing the sales and expenditure along with promotional materials and campaigns undertaken by the plaintiff for its products, showing the continuous and prior use of their mark, 'KYRON'. Further, the plaintiff has also placed on record invoices for sale of its goods under the mark 'KYRON', the earliest invoice being of the year 2012. Thus, it is manifest that in view of the materials placed on record, and the non-contest on part of defendant, the plaintiff is the prior user with the mark 'KYRON'. The defendant, is clearly the subsequent user, that also on a *'proposed to be used'* basis, and has failed to place on record any usage of its mark, 'BSB MYRON'.

13. The plaintiff is the registered proprietor of the trademark "**KYRON**" and holds several registrations for the same. An illustrative list of the specific classes in which the trademark "**KYRON**" is registered, is provided as under:

S. No.	Registration No.	Trademark	Class	Date
1.	2053037	KYRON	33	12/11/2010
2.	2053038	KYRON	32	12/11/2010
3.	2798923	KYRON 	32	27/08/2014
4.	2939316	KYRON	9	10/04/2015
5.	3025675	KYRON 	9	05/08/2015
6.	3564109	MASTER CELLAR SELECTION KYRON PREMIUM BRANDY	33	06/06/2017
7.	3732373	KYRON RARE BRANDY	33	19/01/2018
8.	4905990	KYRON 	32	16/03/2021
9.	4981808	KYRON Soda	32	24/05/2021

				
10.	5180461	KYRON Exclusive Brandy 	33	20/10/2021

14. The Court notes that the plaintiff has provided records of the sales of its products bearing the "**KYRON**" trademark, which reflect the mark's market presence and success. These sales figures, as given in the plaint, are reproduced as under:

Years-Fiscal year ending on 31st March	Wholesale sales (*cases containing 9 liters)* (Estimate)	
	Pan India	Export
2012-13	14,040	454
2013-14	39,946	1,455
2014-15	65,821	5,886
2015-16	114,490	8,266
2016-17	154,886	1,450
2017-18	166,664	2,233
2018-19	143,601	-
2019-20	146,954	1,050
2020-21	83,932	1,104
2021-22	107,844	1,437
2022-23	139,771	1,790

Year	Sales Promotion Expenses (Rs. In Lakhs)
2011-12	50.08
2012-13	114.75
2013-14	302.59
2014-15	404.88
2015-16	604.97
2016-17	604.85
2017-18	645.78
2018-19	638.40
2019-20	384.97
2020-21	273.99
2021-22	367.53
2022-23	447.74

15. The next aspect that remains to be analysed, is whether the impugned mark of the defendant is deceptively similar to the registered trade mark of the plaintiff. In this regard, a comparison of the plaintiff's mark with that of the defendant, is shown as under:

Plaintiff's mark	**Defendant's mark**
KYRON	BSB MYRON

16. A side by side comparison of the defendant's mark with that of the plaintiff's mark makes it evident, that the defendant has slavishly imitated the mark "**KYRON**" of the plaintiff. It is well-established that the likelihood of confusion between trademarks is determined by analyzing both their visual and phonetic resemblance. In the present case, the plaintiff's mark "**KYRON**" and the defendant's mark "**MYRON**" are strikingly similar. The only difference between the two marks is the change in the initial letter from "**K**" to "**M**". Phonetically, the marks sound almost identical, with only a slight variation in the initial consonant. Such a minor change is likely to go

unnoticed by the general consumer, resulting in the impression that both marks are associated with the same source. This phonetic similarity is bound to confuse the average customer into believing that the defendant's products originate from the same entity as the plaintiff's.

17. Thus, on the aspect of phonetic similarity, this Court in the case of ***The Indian Hotels Company Ltd. Versus Ashwajeet Garg and Ors., 2014 SCC OnLine Del 2826***, has held as follows:

> *"xxx xxxxxx*
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> *49.* ***The two competing marks are JIVA and ZIVA. The difference is only of the letter J and Z. The phonetic similarity between Jiva and Ziva is striking. The two marks are phonetically, visually and structurally similar. The rival marks phonetically ring the same in the ears.*** *Considering the usage of words in India and the manner in which the competing words would be written in Indian languages and the similarity of pronunciation if the competing marks are used, the unmistakeable result is that the two marks are phonetically and visually similar.* ***There is a likelihood of confusion. The ordinary customer is likely to be led to believe that "Ziva" is associated with the mark "Jiva" and the trading style of the Plaintiff. The phonetic, visual and structural get up of the two words is so strikingly similar as to lead to a likelihood of deception. The marks when compared keeping in mind an unwary purchaser of average intelligence and imperfect recollection leave no room for doubt that there is likelihood of confusion in case both the marks are permitted to remain in the market. When the above laid tests are applied to the facts of the present case, it is prima-facie seen that both the marks are deceptively similar.***
>
> *xxx xxx xxx"*
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> *(Emphasis Supplied)*

18. It is evident that the plaintiff is the prior user and adopter of the mark "**KYRON**" and has been using the mark in relation to its liquor products for a considerable period, establishing substantial goodwill in the market. In contrast, the adoption and use of the mark "**MYRON**" by the defendant is much later, and is clearly with a dishonest intention to attain illicit gains by riding upon the goodwill and reputation of the plaintiff. The plaintiff, being

a prior user of the mark in question, is entitled to protect its rights against the defendant who is a subsequent user of a deceptively similar mark.

19. In the present case, both marks are phonetically identical and visually and structurally, deceptively similar. Thus, it is evident that the defendant has attempted to create an unlawful association with the plaintiff. Such use of a deceptively similar trademark for identical goods and services is likely to cause confusion and deception amongst the consumers. As per Section 29(2) of the Trademarks Act, 1999, use of an identical/similar trademark for identical/similar services and goods, leading to likelihood of confusion, amounts to infringement of trademark.

20. Further, this Court is of the view that the acronym "**BSB**" has been rendered virtually indistinguishable due to its small font size and disjointed placement in the defendant's branding. As a result, the dominant element of the defendant's mark is undeniably "**MYRON**", which is likely to be the sole component that consumers associate with the product, thereby diminishing the likelihood that the mark will be remembered or recalled as "**BSB MYRON"**. Further, it is pertinent to note that the defendant, on its official website, does not advertise or promote the product under the name "**BSB MYRON"**, but rather simply as "**MYRON"**. The said position underscores defendant's intention to establish the product under the deceptively similar mark.

21. In such cases of phonetic and syllabic similarity, the need for further evidence to establish infringement becomes unnecessary. Where the defendant has adopted the primary and distinguishing elements of the plaintiff's mark, any differences in overall appearance, do not alter the situation. When two marks are identical in their entirety, the matter of infringement is clear and beyond dispute, as the mere use of a mark that is

identical to another constitutes an infringement by its very nature. In this regard, the Supreme Court in the case of ***Kaviraj Pandit Durga Dutt Sharma Versus Navaratna Pharmaceuticals Laboratories, 1964 SCC Online SC 14***, has held as follows:

> *"xxx xxx xxx*
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> *29.* ***When once the use by the defendant of the mark which is claimed to infringe the plaintiff's mark is shown to be "in the course of trade", the question whether there has been an infringement is to be decided by comparison of the two marks. Where the two marks are identical no further questions arise; for then the infringement is made out****. When the two marks are not identical, the plaintiff would have to establish that the mark used by the defendant so nearly resembles the plaintiff's registered trade mark as is likely to deceive or cause confusion and in relation to goods in respect of which it is registered. A point has sometimes been raised as to whether the words "or cause confusion" introduce any element which is not already covered by the words "likely to deceive" and it has sometimes been answered by saying that it is merely an extension of the earlier test and does not add very materially to the concept indicated by the earlier words "likely to deceive". But this apart, as the question arises in an action for infringement the onus would be on the plaintiff to establish that the trade mark used by the defendant in the course of trade in the goods in respect of which his mark is registered, is deceptively similar. This has necessarily to be ascertained by a comparison of the two marks — the degree of resemblance which is necessary to exist to cause deception not being capable of definition by laying down objective standards. The persons who would be deceived are, of course, the purchasers of the goods and it is the likelihood of their being deceived that is the subject of consideration****.*** ***The resemblance may be phonetic, visual or in the basic idea represented by the plaintiff's mark. The purpose of the comparison is for determining whether the essential features of the plaintiff's trade mark are to be found in that used by the defendant. The identification of the essential features of the mark is in essence a question of fact and depends on the judgment of the Court based on the evidence led before it as regards the usage of the trade. It should, however, be borne in mind that the object of the enquiry in ultimate analysis is whether the mark used by the defendant as a whole is deceptively similar to that of the registered mark of the plaintiff.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

22. The defendant's failure to contest the present proceedings despite having been served, makes it abundantly clear that the defendant has chosen not to challenge the plaintiff's claims. In the absence of any defence, the plaintiff's averments are un-rebutted and stand established on the basis of the documents on record. Thus, it is imperative that the suit be decreed in favour of the plaintiff and against the defendant.

23. Holding that if the Court comes to a conclusion that the defendant lacks a real prospect of successfully defending the claim, a Commercial Court is entitled to pass a summary judgment in terms of the summary procedure in the Commercial Courts Act, 2015, this Court in the case of ***Su-Kam Power Systems Ltd. Versus Kunwer Sachdev and Another, 2019 SCC OnLine Del 10764***, has held as follows:-

> *"xxx xxx xxx*
>
> *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 XIIIA, CPC to commercial disputes, demonstrates that the trial is no longer the default procedure/norm.*
>
> *91.* ***Rule 3 of Order XIIIA, CPC, as applicable to commercial disputes, empowers the Court to grant a summary judgement 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 XIIIA, CPC 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 (supra), in the event, the Court comes to the conclusion that the defendant lacks a real prospect of successfully defending the claim.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

24. Thus, this Court notes that the defendant has no real prospect of defending the plaintiff's claim as it has neither entered appearance nor has it filed any written statement. The present case is a fit case for passing a summary judgment under Order XIII-A of CPC, as applicable to commercial disputes, read with Rule 27 of Delhi High Court Intellectual Property Division Rules, 2022.

25. This Court also notes the submission made by learned counsel for the plaintiff that the plaintiff has no issue with the defendant using only the mark "**BSB**". Thus, in light of the aforesaid, the defendant is free to use merely the mark "**BSB**".

26. It is also to be noted that by today's order, in the rectification petitions filed on behalf of the plaintiff, the registrations in favour of the defendant, have been cancelled.

27. As regards costs and damages, in the facts and circumstances of the present case, learned counsel for the plaintiff has given up the said relief.

28. Accordingly, the present suit is decreed in favour of plaintiff and against the defendant in terms of the prayers at paragraph no. 43 (a), (b) and (c) of the plaint.

29. Let decree sheet be drawn up.

30. The present suit, along with the pending application, stands disposed of.

MINI PUSHKARNA, J

FEBRUARY 10, 2025

Corrected & Released on: 22nd February, 2025
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