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

% *Date of Decision: 06 July, 2026*

\+ CS(COMM) 519/2019

IMAGINE MARKETING PVT. LTD. .....Plaintiff

Through: Mr. Jayant Mehta, Senior Advocate with Mr. Tushar Jarwal, Ms. Suman Yadav, Ms. Nikhita K. Suri, Mr. Arunabha Gananguli, Ms. Atishree Sood, Mr. Gurudas Khurana, Mr. Raghav Dutt and Mr. Om Shelat, Advocates.

versus

EXOTIC MILE .....Defendant

Through: Mr. Akhil Sibal, Senior Advocate with Mr. Sharabh Shrivastava, Ms. Taaniyaa Dograa, Ms. Sarah Haque and Mr. Krishnesh Bapat, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

I.A. 25986/2025 in CS(COMM) 519/2019

1. This application is filed on behalf of the Plaintiff under Order XXXIX Rules 1 and 2 CPC *inter alia* seeking interim injunction restraining the Defendant and all others acting on its behalf from selling, exporting, importing, offering for sale, distributing, advertising and/or directly or indirectly dealing in goods and/or services under the mark BOULT and/or any other mark deceptively similar to Plaintiff's registered trademarks BOAT/boAt and boAt and/or any other mark similar to

and deceptively similar to Plaintiff's registered trademarks BOAT/boAt, , amounting to infringement and passing off.

2. Present suit was instituted by the Plaintiff *inter alia* seeking permanent injunction restraining the Defendant from using the wordmark BOULT and other device marks deceptively similar to Plaintiff's registered trademarks. By order dated 25.09.2019, Court granted *ex parte* ad interim injunction restraining the Defendant in terms of prayer (i) of paragraph 15 of I.A. No.13041/2019, filed by the Plaintiff seeking *ex parte* interim injunction. For ready reference, paragraph 15(i) is as follows:-

> *"15. In light of the facts and circumstances mentioned hereinabove, it is humbly prayed that this Hon'ble Court may pass:*
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> *i. An ex parte order for interim injunction restraining the Defendant, its officers, servants, subsidiaries, and agents or others acting on its behalf from selling, exporting, importing, offering for sale, distributing, advertising, directly or indirectly dealing in goods and/or services under the mark BOULT or* or *any other mark, or trade name, deceptively similar to the Plaintiff's registered trademarks BOAT/boAt,* and *, amounting to infringement of the Plaintiff's copyright, Plaintiff's registered trademarks 2828749, 2828750, 2828752, 4038057, and 3456800, passing off, and unfair trade competition, till the pendency of the present suit."*

3. Aggrieved by the order, Defendant preferred an application under Order XXXIX Rule 4 CPC being I.A. 14039/2019 seeking vacation of the interim injunction. According to the Plaintiff, when this application was filed even the Defendant understood that it was restrained from using the impugned device marks as well as the wordmark BOULT and any other

similar mark. Court disposed of both the applications vide judgment dated 21.01.2020 and operative part of the judgment is as follows:-

> *"18. Indubitably, the plaintiff is the prior user of the trademark BOAT for the same category of goods with similar descriptions and had an established market when the defendant's son acted as a consultant for a distributor of the plaintiff's product even as per its own averment. Thus, the defendant was aware of the mark of the plaintiff. There being phonetic similarity between BOAT and BOULT, the defendant's BOULT is deceptively similar to the plaintiff's mark. Supreme Court in the decision reported as 1969 (2) SCC 131 K.R. Chinna Krishna Chettiar Vs. Shri Ambal and Co., Madras & Anr. held that the resemblance between the two marks must be considered with reference to the ear as well as the eye. It was held:*
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> > *"**7.** There is no evidence of actual confusion, but that might be due to the fact that the appellant's trade is not of long standing. There is no visual resemblance between the two marks, but ocular comparison is not always the decisive test. The resemblance between the two marks must be considered with reference to the ear as well as the eye. There is a close affinity of sound between Ambal and Andal."*
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> *xxx xxx xxx*
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> *21. The class of users of the product sold by the plaintiff and defendant is all strata's of the society including children as well. The similarity between the two marks has not to be adjudicated by way of a precision but the manner in which the senses perceive a fact and retain it in the memory. BOAT and BOULT being quite phonetically similar, a consumer would not have a correct complete and reflection when he goes to buy the product whether the product is of BOAT or BOULT because of the first two and the last alphabet of the two words being the same. Further, the logo of the two products is also similar in the form of a triangle. The tagline also uses the word PLUG in both so as to cause a deception. As held by this Court in Hindustan Sanitaryware (supra) relied upon by learned counsel for the defendant, a mark has to be looked into as a whole and on looking at it as a whole, if there is a phonetic similarity resulting in every likelihood of deception the plaintiff would be entitled to grant of injunction. Learned counsel for the defendant has also contended that the defendant is into this business since the year 2017 and besides manufacturing goods has invested huge amounts in promotion and advertising. Once the Court comes to the conclusion that the adoption of the mark, logo and tagline by the defendant is dishonest in order to ride on the good-will of the plaintiff's product, then merely because the defendant is using it since 2017 or has invested huge amounts in promotion and advertising would not tilt the balance of convenience in favour of the defendant. In the present case the defendant is not only using trademark, logo and tagline deceptively similar to that of the plaintiff, but is also using deceptively similar name for its*

product i.e. "BoultBassBud", and has also adopted a similar get up and colour scheme for its products and packaging.

23. As held in (2016) 2 SCC 683 S. Syed Mohideen Vs. P. Sulochana Bai, relied upon by learned counsel for the defendant, since the defendant is owner of the registered trademark BOULT, no action for infringement would lie viz-a-viz the said trademark, however an action for passing off the trademark, infringement of the copyright and dilution of the mark would certainly lie against the defendant and the plaintiff would be entitled to an injunction on the said count.

24. Consequently, the applications are disposed of and an interim injunction in respect of infringement of the plaintiff's registered trademark 3456800, passing off in respect of plaintiff's registered trademarks 2828749, 2828750, 2828752, 4038057, 3456800 and 3907213, infringement of the copyright of the plaintiff's marks, dilution of the mark is granted in favour of the plaintiff and against the defendants and the defendants, their agents are restrained from using the marks  *and 'UNPLUG YOURSELF' till the disposal of the suit."*

4. Defendant filed an appeal being FAO(OS)(COMM) No.20/2020 challenging the judgment dated 21.01.2020 and vide order dated 27.01.2020, the Division Bench stayed the operation, implementation and execution of the judgment on a *prima facie* observation that there was no similarity, visually or phonetically, between the rival marks and the interim order continued till the final disposal of the appeal on 15.09.2025. Division Bench affirmed the judgment of the learned Single Judge to the extent Defendant was injuncted from using the device marks  , pending disposal of the suit, but set aside the direction restraining the use of tagline UNPLUG YOURSELF. During the pendency of the appeal, Defendant informed the Court that it had given up the use of the impugned marks including BOULT, save and except, the marks  and

, which it was intending to phase out from August, 2025 and had transitioned to GOBOULT. Noting this fact, Division Bench clarified in the judgment that use of the mark GOBOULT by the Defendant was never under challenge before the learned Single Judge and hence, there was no restraint against use of the said mark by the Defendant. It was, however, observed that if the Plaintiff desired to challenge the said use, that would form a separate cause of action which would have to be taken up in appropriate proceedings and any such challenge, if initiated by the Plaintiff would, needless to say, be decided in accordance with law. After the disposal of the appeal, Plaintiff filed the present application seeking interim injunction against the use of the wordmark BOULT and any mark deceptively similar thereto.

5. Case of the Plaintiff in the present application, as articulated by Mr. Jayant Mehta, learned Senior Counsel, is that the Defendant ought to be restrained from using the wordmark BOULT, which is phonetically and visually deceptively similar to Plaintiff's mark BOAT and its formative marks. The learned Single Judge in its judgment dated 21.01.2020 found phonetic similarity between BOAT and BOULT and this finding was not interfered with and has been upheld by the Division Bench vide judgment dated 15.09.2025. No appeal has been preferred by the Defendant against the said judgment and hence, the finding of phonetic similarity in the two marks has attained finality. In any event, there is a restraint on the use of device mark which prominently features and includes the word BOULT and as a logical sequitur, the wordmark BOULT ought to be

injuncted. Axiomatically, if use of the mark  has been restrained, it is unfathomable to argue that the wordmark BOULT, which is phonetically similar to Plaintiff's BOAT mark, cannot be restrained since the test of passing off on the touchstone of phonetic similarity as a factor has been upheld by the Division Bench and applies equally to determining similarity in the wordmarks. In fact, the entire challenge in the suit is predicated on the foundation that the marks BOAT and BOULT are phonetically similar and Defendant is cleverly attempting to take advantage of a mere technicality of an inadvertent omission in the judgment dated 21.01.2020 of the wordmark BOULT. The fact that this was a mere oversight is visibly clear from the finding of the learned Single Judge that the mark BOULT is deceptively similar to Plaintiff's registered mark BOAT in paragraphs 18 and 21 and it is only in the operative part in paragraph 24 that the mark BOULT was omitted. The inadvertent omission is further corroborated if one reads the *ex parte* ad interim injunction order dated 25.09.2019, where Court had restrained the Defendant from using the wordmark BOULT as also the application by the Defendant seeking vacation of interim injunction, wherein no distinction was made between wordmark BOULT vis-à-vis device mark  . In fact, knowing that Defendant was unlikely to succeed in the appeal *qua* the wordmark BOULT, it discontinued use of the mark during the pendency of the appeal and also filed an affidavit stating that use of the said mark has been stopped *albeit* the mark is being used. Even during the hearing before the Division Bench, Defendant never argued that the competing wordmarks were phonetically dissimilar.

6. It was further urged that it is not open to the Defendant to even contest this application since Defendant always understood that there was a restraint both against the device marks and the wordmark BOULT and this is fortified by the fact that after the grant of *ex parte* injunction on 25.05.2019, Defendant ceased selling its products bearing the impugned marks including the wordmark and commenced the use only after the Division Bench stayed the operation of the judgment. In fact, in ground (B) of the appeal, Defendant clearly set out wordmark BOULT as one of the impugned marks forming subject matter of the appeal and even the proposal submitted before the Division Bench, proposing to change the same to GOBOULT, included the wordmark BOULT.

7. It was argued that in any event, the label mark which has been restrained is nothing but the word BOULT in a stylized form and therefore, the wordmark must necessarily be injuncted. [***Ref.: Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceuticals Laboratories, 1964 SCC OnLine SC 14***]. The argument of the Defendant that the relief claimed in the present application is barred by *res judicata*, issue estoppel, delay and suppression is devoid of merit. None of these grounds are tenable once the phonetic similarity between BOAT and BOULT stands upheld by the Division Bench and the judgment has attained finality. The continuous use of the impugned mark BOULT is in the teeth of the findings of the learned Single Judge affirmed by the Division Bench as also Defendant's own stand on an affidavit that it had discontinued the use of all impugned marks including the tagline, except the marks  and  , which it was intending to phase out and stop using from August, 2025, as the

Defendant had transitioned to the mark GOBOULT. Moreover, there is no finding either by the learned Single Judge or the Division Bench that Plaintiff is not entitled to injunction on the wordmark BOULT and once there is no decision on merit, neither the doctrine of *res judicata* nor issue estoppel is attracted and this is fortified by the observation of the Division Bench that the judgment of the learned Single Judge does not cover the wordmark BOULT and being the Appellate Court, it is not in a position to rectify the omission. It is also pertinent to note that the Division Bench has not held that Defendant can continue to use the wordmark BOULT and instead has observed that Defendant can use the wordmark GOBOULT and it is for the Plaintiff to take recourse to appropriate remedy against the said use and to this extent, there is no merger of the judgment dated 21.01.2020 with the judgment of the Division Bench dated 15.09.2025.

8. It was strenuously argued by Mr. Mehta that it is a settled law that a party can file multiple applications under Order XXXIX Rules 1 and 2 CPC and there is no express bar in filing a subsequent application, when an earlier one is decided in case of change in circumstances and/or undue hardship. Order XXXIX Rule 4 CPC demonstrates the intention of the Legislature that a party can seek variation or modification of an order, which means that the injunction orders are merely interlocutory in nature and can be modified. [***Ref.: Arjun Singh v. Mohindra Kumar and Others, 1963 SCC OnLine SC 43*** and ***Rakesh Madan and Another v. Rajasthan Financial Corporation and Others, 2009 SCC OnLine Del 39***]. In the instant case, the changed circumstance is the judgment of the Division Bench where for the first time a finding was rendered that the learned Single Judge had not expressly restrained the Defendant from using the mark BOULT and any deceptively similar mark in the judgment dated 21.01.2020

and till the passing of the judgment in appeal, both the parties also understood that even the use of wordmark BOULT had been injuncted. This changed circumstance thus enables and entitles the Plaintiff in law to seek restraint against the wordmark BOULT. Mr. Mehta asserted that Plaintiff is suffering undue hardship due to Defendant's dishonest adoption and use of BOULT, which is phonetically deceptively similar to Plaintiff's prior adopted and used mark BOAT, in respect of goods falling in the same category with similar description and which is the whole foundation of the subject matter of the suit. Since the Defendant is continuing to use the mark, each use gives rise to a fresh cause of action and under the trademarks regime, 'use' is interpreted as continuous actual commercial use, where each instance of using a mark constitutes fresh cause of infringement and passing off and even on that touchstone, this application is maintainable.

9. It was further urged that Plaintiff satisfies all parameters for grant of interim injunction i.e. *prima case*, balance of convenience and irreparable loss and injury. In the judgment dated 21.01.2020, learned Single Judge has unequivocally held that Plaintiff is a prior user of the trademark BOAT for same category of goods as under the mark BOULT; the rival marks are phonetically similar; and the Defendant has dishonestly adopted the mark BOULT and these findings regarding existence of *prima facie* case of passing off have been upheld by the Division Bench as justifying no interference. Even otherwise, the principles and findings laid down in both the judgments in respect of device marks will equally apply to the wordmark and/or any other mark similar to the impugned mark BOULT. Hence, Plaintiff has a *prima facie* case in its favour. For the same reason, balance of convenience also lies in favour of the Plaintiff and in effect, Plaintiff is only enforcing its legitimate right for injunction against a phonetically similar

mark and no prejudice will be caused to the Defendant. Plaintiff has invested huge amount of money as also unparalleled efforts to promote its products bearing the mark BOAT and use of the mark BOULT by the Defendant is depriving the Plaintiff of monetary benefits, which it is lawfully entitled to earn as also the opportunity to exploit its intellectual property according to its own commercial strategies and options. Use of the mark BOULT by the Defendant amounts to passing off and the misrepresentation of an association with the Plaintiff is detrimental to the Plaintiff as well as public interest and hence, if the interim injunction is not granted, irreparable harm and injury shall be caused to the Plaintiff. In this backdrop, Mr. Mehta urged that Defendant be injuncted from using the impugned wordmark BOULT during the pendency of the suit while the Plaintiff reserves the right to take recourse to appropriate remedies to challenge the adoption and use of the mark GOBOULT, in terms of the liberty granted by the Division Bench.

10. Arguing on behalf of the Defendant, Mr. Akhil Sibal, learned Senior Counsel urged that the present application be dismissed as not maintainable as it is an abuse of process of law and also barred by doctrine of issue estoppel. The instant application is Plaintiff's second injunction application seeking identical relief sought earlier and not granted by the learned Single Judge in the judgment dated 21.01.2020 disposing of I.As. 13041/2019 and 14039/2019. Plaintiff accepted the judgment and neither challenged the judgment before the higher forum nor sought any clarification/modification/ review of the judgment at the appropriate time before the Single Judge. Defendant challenged the judgment in an appeal but even in these proceedings, Plaintiff did not file any cross-appeal. The appeal has been disposed of on 15.09.2025 noting that the learned Single Judge had restricted the injunction order to impugned device marks and neither party

has challenged this judgment which has thus attained finality. These observations bind this Court and the parties. In fact, after the judgment by the Division Bench, Plaintiff filed I.A. 25533/2025 seeking clarification to the effect that by judgment dated 21.01.2020, Court has injuncted the wordmark BOULT and any other mark or trade name deceptively similar to Plaintiff's trademarks. On this application, Court recorded Defendant's objections on maintainability on 14.10.2025 and expressed a *prima facie* view that the application was beyond the scope of jurisdiction of this Court in view of the judgment of the Division Bench. Plaintiff sought time to take instructions and finally withdrew the application on 16.10.2025 and yet this application has been filed. The instant application filed after 6 years from the passing of the judgment dated 21.01.2020, is only an abuse of process of law for an identical relief sought earlier and not granted and deserves to be dismissed with exemplary costs.

11. It was strenuously argued by Mr. Sibal that it is trite that subsequent applications for the same relief on the same grounds, after an earlier application has been disposed of declining the relief, constitutes an abuse of process of law, as held by the Supreme Court in ***S. Malla Reddy v. Future Builders Cooperative Housing Society and Others, (2013) 9 SCC 349; K.K. Modi v. K.N. Modi and Others, (1998) 3 SCC 573*** and ***Arjun Singh (supra).*** A bare reading of the averments in the present application leaves no doubt that Plaintiff seeks identical relief on precisely the same grounds as sought in I.A. 13041/2019 and to buttress this submission, attention of the Court was drawn to paragraph 17 of the present application, where Plaintiff avers that "*it is unequivocally clear that only on account of oversight was the wordmark BOULT not mentioned expressly while restraining the use of the device/logo marks.*" The very fact that the Plaintiff accepts that the

learned Single Judge allegedly omitted grant of injunction against the wordmark BOULT is enough to show that this application seeks the same relief as sought in the earlier application. The application is also barred by principle of issue estoppel based on public policy and in this context, reliance was placed on the judgment of the Supreme Court in ***Hope Plantations Ltd. v. Taluk Land Board, Peermade and Another, (1999) 5 SCC 590.***

12. It was argued that Plaintiff has heavily relied on the judgment of this Court in ***Rakesh Madan (supra),*** but the judgment in fact supports the case of the Defendant *qua* its objection on maintainability. In paragraphs 14 and 17 of the judgment, Court has held that in the absence of change in circumstances and/or undue hardship, Court is not competent to grant an interlocutory injunction which was sought and not granted earlier on the same set of facts and also cautioned that exercise of power by the Court should not lead to encouraging filing of applications before successive Presiding Officers as no element of wager is to be attached to such successive applications. This judgment was also distinguished in the case of ***Smt. Raj Rani Sharma v. Smt. Gayatri Kukreja and Ors., 2012 SCC OnLine Del 252.***

13. It was further submitted that Plaintiff has not made out a case of change in circumstances and/or undue hardship. These grounds are only an afterthought as even the application lacks pleadings in this regard and the averments are essentially confined to seeking injunction on the same grounds as pleaded in the first application and on which the relief was not granted *albeit* due to inadvertence, as per the Plaintiff. This itself negates any possible argument of a change in circumstances, which requires some additional facts or developments to be able to file a second application for

injunction. The argument that judgment of the Division Bench brought clarity that the learned Single Judge had not grant injunction on wordmark BOULT and is a change in circumstance, is untenable in law and even otherwise on facts, the judgment of the learned Single Judge is absolutely clear wherein the interim injunction did not include the wordmark BOULT and required no clarification.

14. It was further argued that Plaintiff has failed to establish any undue hardship as there are no pleadings to this effect in the application, legal or factual. The averments *qua* the *prima facie* case as also the balance of convenience and irreparable injury are a mere repetition of the grounds set out in the first application and allowing the application will set a trend where every litigant will keep filing successive applications for identical reliefs before successive Benches, when the reliefs are denied by earlier Benches. The only factual foundation as regards the wordmark BOULT is in paragraph 15 of the application, wherein Plaintiff alleges that taking advantage of the observations of the Division Bench, Defendant is still actively using the mark and reliance is placed on printouts of e-commerce websites. The said allegations are denied by the Defendant asserting that the documents relate to discontinued/unavailable products and archived listings and there is no rebuttal in the rejoinder. Moreover, once the Defendant has transitioned to a new trademark GOBOULT and is no longer using the mark BOULT, there can be no case of undue hardship. Despite this fact, Defendant is willing to take all necessary steps in coordination with the Plaintiff to address any purported online residual presence of the mark BOULT.

15. It was also urged that the ulterior motive behind filing the present application is to indirectly undo the judgment of the learned Single Judge

where no injunction was granted *qua* the wordmark BOULT as also the observations of the Division Bench that in the absence of any injunction *qua* the wordmark BOULT or against any deceptively similar mark, there is currently no injunction, direct or indirect, restraining the use of GOBOULT, which would constitute a fresh cause of action to be agitated in separate proceedings. Even otherwise, the argument of inadvertence and oversight by the learned Single Judge is misplaced since the judgment has merged with the judgment of the Division Bench and the only subsisting interim order today is the judgment dated 15.09.2025. [***Ref.: Kunhayammed and Others v. State of Kerala and Another, (2000) 6 SCC 359; Khoday Distilleries Limited (now known as Khoday India Limited) and Others v. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal (under Liquidation) Represented by the Liquidator, (2019) 4 SCC 376*** and ***Balbir Singh and Another v. Baldev Singh (Dead) through his Legal Representatives and Others, (2025) 3 SCC 543***].

16. Last but not the least, it was argued that Plaintiff cannot invoke even the inherent powers of this Court under Section 151 CPC as these powers cannot be exercised where the Civil Procedure Code contains a specific provision entitling the Plaintiff to seek injunction, as held by the Supreme Court in ***K.K. Velusamy v. N. Palanisamy, (2011) 11 SCC 275*** and by the Allahabad High Court in ***Satya Prakash Tiwari @ Kallu and Others v. Civil Judge (Junior Division), Etawah and Others, 2005 SCC OnLine All 1313*** and therefore, the application be dismissed with exemplary costs.

17. Heard learned Senior Counsels for the parties and examined their contentions.

18. The controversy in the present application is in a narrow compass. Plaintiff seeks interim injunction against the Defendant from using the

wordmark BOULT, which according to the Plaintiff is deceptively similar to its mark BOAT and any other deceptively similar mark. From the narrative given above, it emerges that when the *ex parte* ad interim order was granted on 25.09.2019, Court had restrained the Defendant from using the wordmark BOULT in addition to the device marks  . Defendant thereafter filed I.A. 14039/2019 under Order XXXIX Rule 4 CPC seeking vacation of the *ex parte* injunction order dated 25.09.2019. Both I.As. 13041/2019 and 14039/2019 were decided by judgment dated 21.01.2020, restraining the Defendant from using the marks  and tagline 'UNPLUG YOURSELF' till the disposal of the suit. Defendant challenged the judgment and vide order dated 27.01.2020, Division Bench stayed the operation of the impugned judgment. By judgment dated 15.09.2025, the Division Bench affirmed the order of the learned Single Judge to the extent Defendant was injuncted from using the marks  but set aside the direction restraining the use of the tagline 'UNPLUG YOURSELF'. During the pendency of the appeal, Defendant apprised the Division Bench that it had stopped using the impugned marks including the mark BOULT except the marks  and  , which it was intending to phase out and stop using from August, 2025, as the Defendant had transitioned to the mark GOBOULT. Defendant also filed an affidavit to this effect before the Division Bench on 06.04.2025 and both these facts are recorded in the judgment. The Division

Bench, however, clarified that as the use of the mark GOBOULT was never under challenge before the learned Single Judge, there was no restraint against use of the said mark by the Defendant and if the Plaintiff desired to challenge the same, it would form a separate cause of action. The appeal was disposed of with these directions and post the filing of the appeal, present application has been filed by the Plaintiff.

19. Broadly, the asseverations of the Plaintiff in the application are that: (i) learned Single Judge had by *ex parte* ad interim order restrained the Defendant *inter alia* from using the wordmark BOULT and it was only an omission due to oversight and inadvertence that the wordmark BOULT was not expressly mentioned in the judgment dated 21.01.2020; (ii) Court did not intend to decline the interim injunction *qua* the wordmark BOULT in light of the findings of deceptive similarity with BOAT in the earlier part of the judgment and if that was so, there would have been an express reasoning for declining the relief; (iii) Division Bench has affirmed the judgment granting injunction in respect of the impugned device marks thereby accepting and upholding the deceptive similarity in the competing marks and thus the same principle of deceptive similarity and consequent finding of passing off is equally applicable to the wordmark; (iv) Plaintiff has a *prima facie* case being a prior user of the trademark BOAT and there being deceptively similarity in BOULT and BOAT and rival goods being in the same category with similar descriptions as also owing to dishonest adoption by the Defendant and two Courts having concurrently found and affirmed phonetic similarity between BOAT and BOULT; (v) irreparable loss is caused to the Plaintiff which has made substantial investments, both in terms of money and efforts, to promote the products and trademarks and because the Defendant continues to actively use the mark BOULT despite an affidavit

before the Division Bench that it has stopped the use of all marks except  and  and was intending to discontinue them also from August, 2025 since it has transitioned to GOBOULT; (vi) balance of convenience is in favour of the Plaintiff since Defendant has been injuncted to use similar marks owing to their phonetic similarity with Plaintiff's trademarks. Be it noted that there are no specific pleadings in the application with respect to changed circumstances or undue hardship and these were urged during oral arguments and stated in the written submissions.

20. Perusal of judgment dated 21.01.2020 leaves no doubt that the Court did not extend the injunction order to the wordmark BOULT and any other deceptively similar mark to Plaintiff's marks. Division Bench has taken note of this fact in several paragraphs of the judgment and particularly in paragraph 4, where the Court observed that Plaintiff neither filed any application seeking any modification or clarification of the judgment dated 21.01.2020 nor any cross appeal. In my view, it was as clear as day that there was no injunction *qua* the wordmark BOULT in the judgment dated 21.01.2020 but the Plaintiff admittedly took no steps to seek modification/ review or clarification of the judgment to include the wordmark BOULT. The judgment was not challenged and even after the Defendant filed the appeal, Plaintiff did not file any cross appeal. Plaintiff waited for six long years to file the present application and that too after the appeal was disposed of. There is no explanation for waiting for six years, save and except, that realization dawned on the Plaintiff that the wordmark BOULT was not injuncted only after Division Bench's observation that learned Single Judge restricted the interim injunction to the three device marks and

tagline, which cannot be accepted after reading the operative part of the judgment of the Single Judge wherein there is no mention of the wordmark BOULT.

21. It is a settled law that a second injunction application should not be entertained on identical set of facts and the exceptions carved out are 'changed circumstances' and/or 'undue hardship' and to the extent of the said legal proposition, reliance by Mr. Mehta, learned Senior Counsel on the judgment of this Court in ***Rakesh Madan (supra),*** is correct. In the said case, Court was dealing with an identical question as to whether a second application for the same relief as in the first application under Order XXXIX Rules 1 and 2 CPC, is maintainable. It was observed by the Court that though CPC does not contain any express bar to a second application and the bar is restricted to a second suit only, but the Courts have held that principles of Section 11 are applicable to successive stages of the same proceedings also *albeit* this principle may not apply to orders of an interlocutory nature as held in ***Prahlad Singh v. Col. Sukhdev Singh, (1987) 1 SCC 727.*** Court thereafter referred to Order XXXIX Rule 4 CPC and observed that the provision itself does not attach any finality to the orders in the nature of interlocutory injunction and enables the Court to discharge or vary or set aside an order on finding the same to be necessary by change in circumstances or if the order is found causing undue hardship to any party. One cannot gloss over the observations of the Court in paragraph 14, where it was observed that without any change in circumstances or without any case of undue hardship being made out, Court is not competent to, in the same facts, grant an interlocutory injunction, which was declined earlier. Caution has to be exercised that such power does not lead to filing applications before successive presiding officers and

there is no element of wager to be attached to such successive applications. Therefore, applying this very judgment to the present case, the instant application can be entertained only if Plaintiff pleads and establishes a case of changed circumstances or undue hardship.

22. As for the changed circumstance, Defendant is right that this argument will entail some altered or additional facts or development for the Plaintiff to seek the relief not granted earlier and mere omission or oversight in the judgment dated 21.01.2020 cannot be a ground to re-agitate the same relief in the second application. On the same touchstone the judgment of the Division Bench cannot be construed as a change in circumstance, whereby the judgment of the learned Single Judge has been affirmed to the extent of the device marks. Pertinently, even here the argument is not that the Division Bench has made some new observations giving rise to a cause to file a second application. The argument is that only after the Division Bench observed that the Single Judge had restricted the interim injunction to device marks that clarity came on the scope and ambit of the said judgment. This argument is both factually and legally untenable. On a factual note, there is no ambiguity or confusion in the judgment dated 21.01.2020 inasmuch as on a plain reading there was no interim injunction for the wordmark BOULT. The Division Bench has only referred to this as a fact and matter of record in reference to the judgment impugned before it and stated the obvious as emerging from the judgment and cannot constitute 'changed circumstance' in law.

23. As for undue hardship, there is no specific pleading in the application and as rightly flagged by Mr. Sibal, Plaintiff has failed to establish undue hardship. The only factual foundation is set out in paragraph 15 of the application, wherein the Plaintiff alleges that taking advantage of the

technicalities, Defendant is continuing to use the wordmark BOULT and reliance is placed on screenshots of e-commerce websites to demonstrate the same. Defendant categorically denied this assertion in its reply stating that the documents filed by the Plaintiff related to discontinued/unavailable products and archived listings. There is no rebuttal to this in the rejoinder by the Plaintiff.

24. The only other ground asserted is that the wordmark BOULT is deceptively similar to the BOAT mark and once Courts have found phonetic similarity with the impugned device marks as the test for passing off, on the same yardstick the wordmark BOULT ought to be restrained. Reading of the first application shows that phonetic similarity was the ground taken by the Plaintiff in the first application i.e. I.A. 13041/2019 also for the wordmark BOULT, but no injunction was granted with respect the said mark and/or any other similar mark. In effect this application is primarily founded on the grievance that non-grant of injunction *qua* the wordmark was a mere omission due to oversight and inadvertence. Paragraph 17 of the application is testament to this fact and is in itself pointer to the fact that identical relief is being claimed in the present application and is enough to dismiss this application.

25. Defendant rightly urges that Plaintiff is unable to point out any change in circumstance after the passing of the judgment dated 21.01.2020, which has altered the position from the one that obtained when the judgment was passed, which has now merged with the order of the Division Bench restricting the relief of injunction to the three device marks  , and hence granting interim injunction on the

wordmark BOULT on ground of deceptive similarity at this stage is beyond the remit of this Court and will amount to rewriting both the judgments.

26. Be it also noted that prior to filing the instant application, Plaintiff had filed I.A. 25533/2025 seeking clarification to the effect that judgment dated 21.01.2020 had injuncted the wordmark BOULT and any other mark or trade name deceptively similar to Plaintiff's trademarks. Court recorded the objection of the Defendant on the maintainability of the application on 14.10.2025 and also expressed a *prima facie* view, as recorded in paragraph 5 the order that the application was beyond the scope of jurisdiction of this Court. Plaintiff sought an adjournment and on 16.10.2025, withdrew the application unconditionally, with no liberty. Thereafter, the present application has been filed seeking the same relief circuitously and cannot be entertained. In this context, Mr. Sibal rightly placed reliance on the judgment in ***S. Malla Reddy (supra), K.K. Modi (supra)*** and ***Arjun Singh (supra),*** to argue that filing subsequent applications for the same relief on the same set of facts, where the relief is once declined and the application is disposed of, constitutes abuse of process of Court. The argument that Court may invoke its inherent powers under Section 151 CPC also cannot be accepted in the aforesaid facts and more so, when exercising power under a specific provision of the Code i.e. Order XXXIX Rules 1 and 2, Court restricted the relief to the device marks and against which neither any application for review/modification/clarification nor any appeal was filed and even during the pendency of Defendant's appeal, no cross appeal was filed.

27. There is another aspect of the matter, especially in the context of the alleged undue hardship, vociferously contended on behalf of the Plaintiff and which is that Defendant is no longer using the wordmark BOULT.

During the pendency of the appeal, Defendant had informed the Division Bench that it had discontinued the use of the impugned marks, save and except, the marks  and  , which too it had decided to phase out from August, 2025. An affidavit dated 06.05.2025 was also filed by the Defendant to this effect before the Division Bench. Even before this Court, Defendant has reiterated this stand and stated that it has transitioned to the new trademark GOBOULT and is no longer manufacturing any goods under the trademark BOULT. In light of this, even assuming that the application can be entertained, the ground of undue hardship has no foundation. In fact, if one looks at the averments in the application, the case of the Plaintiff appears to be that despite taking a position before the Appellate Court that Defendant has not given up the use of the impugned marks and is continuing to use the same. While the Defendant denies this position in its reply, Mr. Sibal had during the course of hearing repeatedly stated, on instructions, that if any stray listings are found to exist, Defendant is willing to extend any assistance to take down the same to address any purported online residual presence of the wordmark BOULT.

28. For all the aforesaid reasons, there is no merit in the application and the same is accordingly dismissed.

JYOTI SINGH, J.

JULY 6th, 2026/YA