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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\# **CNR No. DLHC010488672024**

\+ **CS(COMM) 670/2024**

NAO SPIRITS AND BEVERAGES PRIVATE LIMITED
F-93 GROUND FLOOR &, THIRD FLOOR,
OKHLA INDUSTRIAL AREA, PHASE-III,
OKHLA INDUSTRIAL ESTATE,
NEW DELHI, INDIA, 110020
ALSO AT:
A-4, OCEAN HEIGHT, DONA PAULA,
RAJ BHAWAN, NIO DONA PAULA,
NORTH GOA, GOA- 403004 .....PLAINTIFF

(*Through: Mr. C.M. Lall, Senior Advocate with Mr. Sagar Chandra, Ms. Ishani Chandra, Ms. Shubhie Wahi, Ms. Annanya Mehan, Ms. Sanya Kapoor and Ms. Mansha Bhatia, Advocates.)*

versus

MOHAN MEAKIN LIMITED
SOLAR BREWERY, P.O,
SHIMLA HILLS, HIMACHAL PRADESH- 173214
ALSO AT:
MOHAN NAGAR,
GHAZIABAD, UTTAR PRADESH -201007 .....DEFENDANT

(Through: Mr Sandeep Sethi, Senior Advocate with Mr. Krishna Gambhir, Ms. Shreya Sethi and Mr. Ritvik Sharma, Advocates.)

% Reserved on: 05.11.2026
Pronounced on: 26.11.2026

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JUDGMENT

I.A. 35992/2024 (under Order- XXXIX Rule 1 & 2 of the CPC)

A.FACTUAL BACKGROUND

The plaintiff has filed the present suit seeking a decree of permanent injunction restraining the defendant from infringing its trade-marks and from passing off its goods as those of the plaintiff, along with ancillary reliefs of rendition of accounts, damages and delivery up. The present application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 ('CPC') seeks an interim injunction, pending the suit, restraining the defendant from selling gin in a bottle and under a trade dress that are said to be deceptively similar to those of the plaintiff's gin sold under the mark 'GREATER THAN'.

2. The plaintiff, Nao Spirits and Beverages Private Limited, is a company incorporated in the year 2010. It manufactures and sells spirits, including the gins 'GREATER THAN' and 'Hapusa' and the rum 'Pipa'. 'GREATER THAN' is its flagship product. According to the plaintiff, it is a London Dry Gin introduced in India in the year 2016 and one of the first homegrown craft gins in the Indian market.

3. The plaintiff states that the bottle in which 'GREATER THAN' is sold was designed and adopted by its founders in the year 2016. In the plaint, it gives the reasons for this choice: the bottle is sleek and simple with clear, straight lines; its simplicity makes it suitable for brand recall; its short

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neck makes it suitable for pouring; its slender form makes it suitable for re-use once emptied; and no other entity in India was using a similar bottle for liquor. The plaintiff has used the same bottle ever since.

4. The plaintiff describes its trade dress as consisting of the following visual elements:-

> *(i) Sleek, slender and simple bottle shape,*
>
> *(ii) Predominantly black-and-white colour scheme, with a slight presence of copper text,*
>
> *(iii) Placement of the word mark, "GREATER THAN" and device mark ">", prominently in the centre, top portion of the label,*
>
> *(iv) Placement of the words 'LONDON DRY' in smaller font and the word 'GIN' in larger font directly under it.*
>
> *(v) Black bottle cap.*

5. The plaintiff also sells limited-edition variants of 'GREATER THAN', namely 'Juniper Bomb' (2020–2021), 'Broken Bat' and 'No Sleep' (2021 onwards) and 'Punk Gin' (2024). The labels and colours of these variants differ, but four elements remain constant across all of them: the shape of the bottle, the size and position of the label, the mark '>' and the mark 'GREATER THAN'. The plaintiff's case is that its consumers have, therefore, come to expect new editions of its gin in the very same bottle.

6. The plaintiff is the registered proprietor of the word mark 'GREATER THAN' (Nos. 3344782 and 4512700) and of device marks including

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‘

’ (Nos. 3344783, 3344784, 4512699 and 5190496), besides the marks ‘BROKEN BAT’ and ‘NO SLEEP’, all in Class 33. It has also applied for registration of the three-dimensional shape of its bottle, with label (No. 5455576) and without label (No. 5455577). The first remains under objection. The second was accepted on 24.02.2025 and advertised on 03.03.2025, and the defendant has opposed it on 09.04.2025. The plaintiff holds no registration for its label or trade dress as a whole, and no design registration for the bottle.

7. In support of its goodwill, the plaintiff relies on its sales, which rose from about ₹1.10 crore in FY 2018-19 to about ₹53.52 crore in FY 2023-24, when it crossed the sale of one million bottles; its presence in more than eleven Indian cities and sixteen countries; seventeen awards listed in the plaint between 2018 and 2024; press coverage, including an article in the New York Times dated 28.01.2023; and social media material, including comments of consumers from 2020 to 2023 about the bottle and its re-use as a water bottle, and posts that use only the outline of the bottle without any label.

8. The defendant, Mohan Meakin Limited, is a company with a history of more than 160 years in the liquor trade. It sells, among others, ‘OLD MONK’, ‘GOLDEN EAGLE’, ‘BIG BEN LONDON’ gin and ‘JAMUN’ gin. It states that it has used the mark ‘IQ’ for beer since 1996, with an excise approval for the beer label dated 28.10.1996, and that it launched gin under the impugned ‘iQ’ label in August 2023, the earliest excise approval

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for that label being dated 22.06.2023. The defendant has applied for registration of its 'iQ' device marks in Class 33 under Application No. 5593692 dated 02.09.2022 and Application No. 6302553 dated 14.02.2024, both on a 'proposed to be used' basis. Both stand opposed.

9. The plaintiff states that it became aware of the impugned product in March 2024. On 21.03.2024, it found that the online store of the retail chain Spencer's had listed the defendant's 'iQ' gin with the description of the plaintiff's 'GREATER THAN' gin. The plaintiff issued a legal notice on 13.05.2024. The defendant sent an interim reply on 18.05.2024 and a detailed reply on 28.05.2024, denying the claim. The suit was thereafter filed on 07.08.2024.

10. The rival products, as depicted in the plaint, are reproduced below:

Features	Plaintiff's shape mark and registered trademark	Defendant's product
Sleek, long and round bottom based bottle with a cork sealed in colour black Unique use of colour coding consisting of the colours black, white and copper.		

(Extract from the comparison table in the plaint: the plaintiff's GREATER THAN gin in the middle column and the defendant's iQ gin in the right column.)

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B. SUBMISSIONS ON BEHALF OF THE PLAINTIFF

11. Mr. Chander M. Lall, learned Senior Counsel for the plaintiff, submitted that the present case is primarily one of passing off of the overall get-up of the plaintiff's gin, that is, the shape of its bottle together with its trade dress. According to him, the plaintiff has used the same bottle and the same broad trade dress since 2016, and the get-up has come to be identified with the plaintiff alone. He relied on the plaintiff's sales, awards, press coverage and consumer comments, and on the fact that the plaintiff promotes the bottle even without its label.

12. He submitted that the defendant has copied the bottle along with the black-and-white scheme, the black cap, the placement of a large black angular device at the top centre of the label where the plaintiff places '>', and the arrangement of 'LONDON DRY' in small letters over 'GIN' in large letters.

13. He contended that the adoption was dishonest, relying on ***(i)*** an internal email of M/s PGP Glass, the bottle maker, recording that it had refused to make for the defendant a bottle that looked like the plaintiff's 750 ml bottle; ***(ii)*** the technical drawing of the defendant's bottle; ***(iii)*** the absence of any explanation for the choice of this bottle when the defendant's other gins are sold in different bottles; and ***(iv)*** on the change of the defendant's IQ device from the green and gold used for beer to black and white for gin.

14. He further submitted that the products are identical, are sold through the same liquor shops, often side by side and across crowded counters, at

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broadly similar prices. Also, that advertising of liquor is prohibited, so the product itself does the work of recall, and the plaintiff's practice of releasing special editions in the same bottle makes it likely that iQ gin would be taken as another edition of GREATER THAN.

15. Learned senior counsel submits that Spencer's listing of iQ gin with the plaintiff's description shows actual confusion. As to the third-party bottles cited by the defendant, he submitted that they are foreign, are not sold in India, or are stock designs of glass makers, and that the only identical bottle in India, that of 'Jin Jiji', is used with the plaintiff's consent.

C. SUBMISSIONS ON BEHALF OF THE DEFENDANT

16. Mr. Sandeep Sethi, learned Senior Counsel for the defendant, submitted that the case is one of passing off alone, since there is no similarity between 'GREATER THAN' and 'iQ', and the plaintiff has no registration for its label or its bottle. Comparing the iQ rhombus with '>' would amount to dissecting the marks. He relied on ***Pernod Ricard India Private Limited v. Karanveer Singh Chhabra,***[1] ***Nandhini Deluxe v. Karnataka Cooperative Milk Producers Federation Ltd.***,[2] and ***Carlsberg India Pvt. Ltd. v. Radico Khaitan Ltd***.[3].

17. He submitted that the bottle is an ordinary, generic and functional bottle, as the plaint itself describes it, and that identical bottles are sold across the world and offered as stock designs by glass makers. In India, Haku vodka and Indri whisky use similar bottles. A shape can be protected

[1] 2025 SCC OnLine SC 1701.
[2] (2018) 9 SCC 183.
[3] 2011 SCC OnLine Del 5497.

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only if it has acquired a secondary meaning and identifies the source by itself, without a name or label, which requires a high threshold and has placed reliance on ***Knitpro International v. Examiner of Trade Marks***[4]. The plaintiff has no survey, only a few stray consumer comments, and the Trade Marks Registry had itself objected to its shape applications under Section 9(3) of the Trade Marks Act, 1999.

18. On trade dress, he submitted that there is no similarity when the products are seen as a whole. The brand names are prominent and different. The plaintiff's label is black and white with copper at the bottom, while the defendant's is black, white and gold with a floral design. The arrangement of the labels is different, and each bottle carries its own embossing. Relying on ***Britannia Industries Ltd. v. ITC Ltd***.,[5] ***Khoday Distilleries Ltd. v. Scotch Whisky Association,***[6] and ***Pernod Ricard*** (supra), he submitted that gin is bought by discerning consumers who ask for it by its brand name.

19. He submitted that the adoption was honest: 'IQ' has been used for beer since 1996, and the gin is only a natural extension of that brand, sold in a different price segment from the defendant's other gins. The defendant has held excise approvals for the iQ gin label since 22.06.2023 and has sold the product since August 2023, and both products appear in the same state excise lists, yet the plaintiff never objected. The PGP email is undated and cropped, and the drawing relied upon has its date box scribbled over. The Spencer's listing was a passing error that was corrected.

[4] 2022 SCC OnLine Del 2096.
[5] 2017 SCC OnLine Del 7391.
[6] (2008) 10 SCC 723.

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20. Lastly, he contended that the plaintiff suppressed the Examination Reports and its replies before the Registry, and that this alone disentitles it to equitable relief. Reliance is placed on ***Oswal Fats and Oils Ltd. v. Additional Commissioner (Administration),***[7] ***S.P. Chengalvaraya Naidu v. Jagannath,***[8] and ***Bhaskar Laxman Jadhav v. Karamveer Kakasaheb Wagh Education Society***[9]. He submitted that the balance of convenience favours the defendant, which has been in the market since August 2023, and that the plaintiff has suffered no harm, since its own sales have grown.

D. ANALYSIS AND FINDINGS

21. I have heard learned Senior Counsel for the parties and perused the record. The issues that arise are taken up in the following order: ***(I)*** the scope of the present adjudication; ***(II)*** the objection of suppression; ***(III)*** the principles governing the grant of an interim injunction; ***(IV)*** whether the shape of a bottle and its trade dress can be protected in an action for passing off; ***(V)*** whether the plaintiff has goodwill in its get-up; ***(VI)*** whether the defendant's get-up, seen as a whole, is deceptively similar***; (VII)*** the class of consumers and the kinds of confusion likely to arise; ***(VIII)*** the conduct of the defendant in adopting the impugned get-up; ***(IX)*** the remaining objections of the defendant; and ***(X)*** the existence of a *prima facie* case balance of convenience, irreparable harm and the relief to be granted.

I. SCOPE OF PRESENT ADJUDICATION

22. It is first necessary to place the claim in its correct frame. Neither

[7] (2010) 4 SCC 728.
[8] (1994) 1 SCC 1.
[9] (2013) 11 SCC 531.

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party holds a registration for the get-up that is in dispute. The plaintiff's registrations are for the word mark 'GREATER THAN' and for certain device marks, which do not include standalone '>'. It holds no registration for its label or its trade dress as a whole, and its applications for the shape of its bottle are pending. The defendant, on its part, holds no registration for the iQ device or label which it uses on its gin. Its applications for that device were filed in 2022 and 2024 on a 'proposed to be used' basis and are under opposition. The defendant has referred to a registration of the word mark 'IQ' in Class 33; however, as pointed out during the hearing, that registration was not renewed for a considerable period after its expiry. The rival get-ups, therefore, are unregistered on both sides.

23. The plaintiff has also confined its case. Its note of arguments opens by stating that the present case is "*primarily for passing off of the overall getup, … shape of the bottles, trade dress etc.",* and its rejoinder note states that the present case "*pertains to passing off and not infringement of trade mark*". The present application is, therefore, examined only on the touchstone of passing off. The plea of infringement of the registered mark is left open for trial, and the defendant's objection that comparing the iQ rhombus with '>' amounts to dissection under Section 17 of the Trade Marks Act, 1999 (hereinafter 'the Act') does not call for a decision at this stage.

24. Proceedings concerning the marks of both parties are pending before the Registrar of Trade Marks. These include the plaintiff's Application Nos. 5455576 and 5455577 for the shape of its bottle and the defendant's opposition to the latter, and the defendant's Application Nos. 5593692 and 6302553 and the plaintiff's oppositions to them. This Court expresses no

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opinion on any of them. They shall be decided on their own merits, uninfluenced by anything said in this judgment. For the same reason, the acceptance of Application No. 5455577 *qua* the shape of the bottle used by the plaintiff on 24.02.2025 has not been treated as a ground for the view taken here.

25. It must also be made clear at the outset what this Court is not deciding. It is not deciding whether the plaintiff can claim an exclusive right in the shape of its bottle on its own, which is a question of registrability now before the Registrar of Trademarks. Nor does the plaintiff claim, or does this Court recognise, any monopoly over the colours black and white. The only question is whether the overall get-up which the defendant presently uses for its gin, as it stands today, is likely to deceive the public into believing that it is the plaintiff's gin or is connected with the plaintiff.

II. THE OBJECTION OF SUPPRESSION

26. The defendant contends that the plaintiff did not file, with the plaint, the Examination Reports issued on its shape applications and its replies to them, including the objection under Section 9(3) of the Act. The record shows that the plaintiff's application under Order XI Rule 1(4) of the CPC for leave to file additional documents was allowed on 09.08.2024, and that these documents were filed on 07.09.2024. The defendant raised the objection of suppression only thereafter, on 11.09.2024.

27. There is no quarrel with the principle that a party seeking equitable relief must come with clean hands and disclose every material fact, and that it is not for the party to decide what is material (***Oswal Fats and Oils Ltd.***

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(supra); ***S.P. Chengalvaraya Naidu*** (supra**); *Bhaskar Laxman Jadhav*** (supra)). But materiality is judged with reference to the relief sought. The objection under Section 9(3) of the Act concerns the registrability of the bare shape of the bottle as a trade mark. The relief sought here rests on passing off of the overall get-up, a question which, as discussed in Part V below, is a different one. Besides, the documents were placed on record within the leave granted by this Court, and before the defendant raised any grievance.

28. The defendant's further contention that the plaintiff suppressed the correction of the Spencer's listing also does not hold. The corrected listing relied upon by the defendant is dated 03.09.2024, which is after the suit was filed on 07.08.2024. A fact that came into existence after the filing of the suit could not have been suppressed in the plaint. The contention regarding excise approvals is dealt with in Part IX below. The objection of suppression is, accordingly, rejected.

III. PRINCIPLES GOVERNING THE GRANT OF AN INTERIM INJUNCTION

29. The Supreme Court in ***Pernod Ricard*** (supra), which is relied upon by the defendant, restated the principles that guide the grant of interim injunctions in trade mark cases. Paragraph 36.3 reads as under:

> *"36.3. The principles laid down in American Cyanamid Co. v. Ethicon Ltd continue to guide the Courts while determining interim injunction applications in trademark cases. The following criteria are generally applied:*
>
> *(i) Serious question to be tried / triable issue: The plaintiff must show a genuine and substantial question fit for trial. It is not necessary to establish a likelihood of success at this stage, but the claim must be more*

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than frivolous, vexatious or speculative.

(ii) Likelihood of confusion/deception: Although a detailed analysis of merits is not warranted at the interlocutory stage, courts may assess the prima facie strength of the case and the probability of consumer confusion or deception. Where the likelihood of confusion is weak or speculative, interim relief may be declined at the threshold.

(iii) Balance of convenience: The court must weigh the inconvenience or harm that may result to either party from the grant or refusal of an injunction. If the refusal would likely result in irreparable harm to the plaintiff's goodwill or mislead consumers, the balance of convenience may favour granting the injunction.

(iv) Irreparable harm: Where the use of the impugned mark by the defendant may lead to dilution of the plaintiff's brand identity, loss of consumer goodwill, or deception of the public – harms which are inherently difficult to quantify – the remedy of damages may be inadequate. In such cases, irreparable harm is presumed.

(v) Public interest: In matters involving public health, safety, or widely consumed goods, courts may consider whether the public interest warrants injunctive relief to prevent confusion or deception in the marketplace."

30. In the same judgment, at paragraph 36.1, the Supreme Court noted a distinction between infringement and passing off which is of direct relevance to the relief in the present case:

"36.1. ... That said, a fundamental distinction remains: while a registered proprietor may, upon proving infringement, seek to restrain all use of the infringing mark, a passing off action does not by itself confer an exclusive right. In appropriate cases, the court may mould relief in passing off so as to permit continued use by the defendant, provided it does not result in misrepresentation or deception."

31. The application is, therefore, to be examined on the following points: whether the plaintiff has made out a *prima facie* case, including a real likelihood of confusion or deception; where the balance of convenience lies; whether the plaintiff would suffer irreparable harm; and whether public interest calls for interim protection.

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IV. SHAPE AND TRADE DRESS AS SUBJECT MATTER OF PASSING OFF

32. The law of passing off protects the goodwill of a trader against misrepresentation by another. The plaintiff must show goodwill attached to its goods, a misrepresentation by the defendant likely to lead the public to believe that the defendant's goods are those of the plaintiff or connected with it, and damage or a likelihood of damage (***Reckitt & Colman Products Ltd. v. Borden Inc.***[10]; ***Laxmikant V. Patel v. Chetanbhai Shah***[11]**.** What is protected is not a mark as such, but the trade that a person has built under a particular sign or appearance.

33. The Act recognises that the appearance of goods can identify their source. Section 2(1)(m) of the Act provides that 'mark' includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, ***shape of goods, packaging or combination of colours or any combination thereof***. Section 2(1)(zb) defines a 'trade mark' as a mark capable of being represented graphically and capable of distinguishing the goods or services of one person from those of others, and provides that it "may include ***shape of goods***, ***their packaging and combination of colours***". Section 27(2) preserves the right of action for passing off, regardless of registration.

34. The Bombay High Court in ***Gorbatschow Wodka KG v. John Distilleries Ltd.,***[12] a case about the shape of a vodka bottle, held that Section 27(2) is a statutory recognition of the principle that passing off is founded in common law, and laid down the test for a claim founded on shape in the

[10] [1990] 1 WLR 491.
[11] (2002) 3 SCC 65).
[12] 2011 SCC OnLine Bom 557.

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following words:

> *"22. The test is whether the shape that has been adopted by the plaintiff is one that is adopted capriciously, purely to give the article a distinctive appearance or characteristic of the goods of the manufacturer. If that be so, the manufacturer may be able to establish that he has a reputation and goodwill in the distinctive appearance of the article itself which would furnish a cause of action in passing off. In a judgment of the Division Bench of this Court in Aktiebolaget Volvo vs. Volvo Steels Limited, 1998 PTC (18) (DB) the Division Bench has laid a considerable amount of emphasis on the reason for the adoption of the mark. If the defendant has no plausible explanation, then that is certainly a circumstance which must weigh in the balance. …"*

In paragraph 23, the Court added that "under the Trade Marks Act, 1999, the shape of goods and their packaging is statutorily recognized as a constituent element of a trade mark as distinguishing the goods or services of a person with those of others".

35. This Court in ***Apollo Tyres Ltd. v. Pioneer Trading Corporation,***[13] dealt with an argument that a trader who has not registered a design loses protection over the shape. The Court held:

> *"75. The submission of Mr. Lall that-because the tread pattern is registerable as a design, and the same has not been got registered as a design by the plaintiff, the plaintiff has lost its exclusive right over the said design in question, also does not appear to have any merit. The Full Bench decision in Mohan Lal, Proprietor of Maurya Industries (supra) is a complete answer to the submission of Mr. Lall.* ***The non-registration of the design contained in the tread pattern does not take away the rights of the person - who uses the said design contained in the tread pattern, as a trademark, to sue for passing off.***
>
> *…*
>
> *81. Thus, it is evident that* ***the shape of the goods is statutorily recognized as being a constituent element of a trademark. The shape of goods could,***

[13] 2017 SCC OnLine Del 9825.

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> ***in a given case, have trademark significance i.e. the particular shape of the goods could become a source identifier of the goods.*** *Copying of the unique shape of the goods could lead to confusion amongst the consumers with regard to the source from which they originate. ...”*
>
> *(Emphasis Supplied)*

The plaintiff in the present case has no design registration for its bottle. That, by itself, does not bar its action for passing off.

36. Protection is also available to a combination of features, even where each feature on its own is common. This Court in ***Reckitt and Colman Overseas Hygiene Home Limited v. Akash Arora,***[14] which concerned the bottles and trade dress of toilet and household cleaners, held:

> *“22. The Plaintiffs cannot claim monopoly on the use of blue, red, white or yellow colours or any other colour if they are considered individually. However,* ***the distinctive combination, arrangement and presentation resulting in ensemble****, which has been in use for a considerably long period have acquired secondary meaning in favour of the Plaintiffs' Products. Even though the individual components of the Plaintiffs' Trade Dresses are common to the trade,* ***the overall get-up of the Plaintiffs' Trade Dresses requires protection.*** *The rights of the Plaintiffs stem from the overall get-up of the Plaintiffs' Trade Dresses and not just the colours considered individually ...”*
>
> *(Emphasis Supplied)*

37. To the same effect is ***Seven Towns Ltd. v. M/s Kiddiland,***[15] which concerned the shape and colours of the Rubik’s Cube. There, the defendants argued that no exclusivity could be claimed in basic colours or in the black border of the cube. This Court rejected the argument in paragraph 47:

> *“58. The arguments of the defendants are that no exclusivity can be claimed in basic colors or the color black which forms the border/cage. The said submissions have no force as the plaintiffs are not seeking protection in any single feature but in the combination of all these features*

[14] 2026:DHC:2599.
[15] 2016 SCC OnLine Del 5168.

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which constitutes the get up of a product namely the combination of shape/size/color-combination/black border of the squares etc."

38. The protection so granted is against deception, not a monopoly over the product or its form. In paragraph 49 of ***Seven Towns*** (supra), this Court extracted the speech of Lord Jauncey in ***Reckitt & Colman v. Borden*** (supra), which explains the point:

"In my view these two cases are merely examples of the general principle that no man may sell his goods under the pretence that they are the goods of another. This principle applies as well to the goods themselves as to their get-up. ... It is important to remember that such protection does not confer on "A" a monopoly in the sale of ratchet screwdrivers nor even in the sale of such screwdrivers with similarly distinctive handles if other appropriate means can be found of distinguishing the two products. Once again it will be a question of fact whether the distinguishing features are sufficient to avoid deception."

39. It follows that the shape of a bottle, together with the dress in which it is presented, can be the subject of an action for passing off, even without a registration under the Act or the Designs Act, 2000. The plaintiff does not thereby acquire a monopoly over the bottle or over any colour. What the law prevents is a rival dressing its goods in a way that is likely to make the public believe that they come from, or are connected with, the plaintiff.

V. GOODWILL AND SECONDARY MEANING

40. The defendant's main contention is that the plaintiff has not shown that its bottle has acquired a secondary meaning. Reliance is placed on ***Knitpro*** (supra), where this Court recorded the position of law on shape marks as under:

"9. Generally, the novel shape of a product which has aesthetic appeal is protectable under the law of designs, if the requisite conditions are

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> *satisfied. However, under the law of trade marks, the threshold for extending exclusive rights to the shape of a product, is quite high. The shape by itself should immediately be identifiable with the source of the product.* ***For trade mark registration of shape of a product, the same can only be granted if it has acquired a secondary meaning.***
>
> *…*
>
> *13. Thus, the settled legal position is that* ***in order for a shape trademark to be registered****, it has to be shown that the said shape is not the generic shape of the product. It has to be a distinctive shape that associates the mark with the source by itself without anything further like a name or logo appended on it. The shape must have lost its inherent or generic meaning and ought to have acquired a secondary connotation. The standard of distinctiveness required to be acquired would be quite high."*
>
> *(Emphasis Supplied)*

41. Both these paragraphs speak of the registration of a shape as a trade mark, that is, the grant of an exclusive right in the bare shape, good against all persons regardless of the label or name they use. That is the very question pending before the Registrar on the plaintiff's applications and the defendant's opposition. This Court does not decide it, and the threshold set out in ***Knitpro*** (supra) for that purpose does not need to be applied here. Whether the plaintiff's bottle, standing alone and stripped of its label, identifies the plaintiff is a matter for the Registrar and, if need be, for trial.

42. The question in the present application is narrower. It is whether the plaintiff's get-up as a whole, that is, the bottle together with its dress, has come to denote the plaintiff's gin in the market, so that a rival who copies that whole is likely to deceive. This, too, requires material showing that the public associates the get-up with the plaintiff (***Seven Towns*** (supra), paragraph 45), but that association is to be judged in the get-up as it is actually seen by consumers. On the defendant's argument that a colour scheme or get-up must be shown to have acquired distinctiveness, the

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observations in ***Allied Blenders and Distillers Pvt. Ltd. v. Hermes Distillery Pvt. Ltd.***,[16] are apposite:

> *"50. The submission that the get-up should by itself be shown to have attained distinctiveness would also stand satisfied in this case. The Plaintiff's evolution of labels would show that the broad colour scheme, get up has been similar over years & being one of the largest selling whiskies, in the market for more than three decades, such distinctiveness has been clearly attained."*

43. Tested thus, the material on record *prima facie* shows that the plaintiff has goodwill in its get-up. The plaintiff has sold its gin in the same bottle, with the same broad dress, since 2016. Its sales rose to about ₹53.52 crore in FY 2023-24, crossing one million bottles in that year. Third-party commentary has noticed the get-up specifically: the World Gin Club refers to the "simple and sleek black-and-white bottle for Greater Than", and a reviewer notes that "the look of the bottle makes it instantly recognizable". The consumer comments placed on record, dating from 2020 to 2023, speak of spotting the bottle across a bar and of keeping it as a water bottle at home. The plaintiff promotes its gin using only the outline of the bottle. Each of its special editions has kept the same bottle and the same size and position of the label, which has repeatedly reinforced the same picture in the consumer's mind. Apart from 'Jin Jiji', which uses the bottle with the plaintiff's consent, no other gin in the Indian market has been shown to be sold in this get-up.

44. The Court is conscious that the plaintiff's bottle is a simple bottle. Its shape is not 'capricious' in the sense in which the onion-domed bottle in ***Gorbatschow*** (supra) was found to be. That is precisely why the Court does

[16] 2024 SCC OnLine Del 217.

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not rest its view on the bottle alone. The goodwill lies in the combination: this bottle, dressed in a mainly black-and-white label of a particular size and position, with a large black angular device at the top centre, 'LONDON DRY' in small letters over 'GIN' in large letters, and a tall black cap. As held in ***Reckitt and Colman Overseas*** (supra) and ***Seven Towns*** (supra), such a combination can be distinctive even if each element, taken alone, is not. The plaintiff does not seek to stop anyone from using black and white, and it cannot. It seeks to stop the use of its whole get-up, and it is entitled to do so if that is likely to deceive.

VI. MISREPRESENTATION: WHETHER THE RIVAL GETUPS ARE DECEPTIVELY SIMILAR

45. A comparison of the two products above, shows the following common features:

(a) the bottles have practically the same silhouette: a clear glass cylinder with a short, rounded shoulder and a short neck;

(b) both carry a tall black cap;

(c) both are dressed in a predominantly black-and-white scheme, with a large part of the clear glass left visible;

(d) both carry a large, black, angular device at the top centre of the front label: the plaintiff's '>' and the defendant's rhombus, which occupies the same position and catches the eye in the same way; and

(e) both carry the words 'LONDON DRY' in small capital letters placed over the word 'GIN' in large capital letters, in the lower

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half of the label.

46. The defendant has, on the other hand, pointed to several differences. The brand names 'GREATER THAN' and 'iQ' are different. The plaintiff's label is a white band with copper text and a copper band at the bottom, while the defendant's label has a tall black vertical panel, a small gold ornament and no copper. The word 'GIN' appears in black on white on the plaintiff's bottle and in white on black on the defendant's. Each bottle has its own embossing. The plaintiff's own quality report dated 29.07.2024, which compares the technical drawings of the two bottles, also shows that the defendant's bottle is about 10 mm shorter (260 mm against 270 mm) and somewhat wider at the base (78.3 mm against 74 mm), and that it uses a roll-on screw cap instead of a cork closure. To that extent, the plaintiff's plea that the two bottles are identical in every dimension is not borne out. The question is what weight these differences carry.

47. The approach is settled. In ***Parle Products (P) Ltd. v. J.P. & Co., Mysore,***[17] the Supreme Court held:

> *"9. ... It is therefore clear that in order to come to the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him.* ***In this case we find that the packets are practically of the same size, the color scheme of the two wrappers is almost the same; the design on both though not identical bears such a close resemblance that one can easily be mistaken for the other.*** *... Anyone in our opinion who has a look at one of the packets to-day may easily mistake the other if shown on another day*

[17] (1972) 1 SCC 618.

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> *as being the same article which he had seen before. If one was not careful enough to note the peculiar features of the wrapper on the plaintiffs goods, he might easily mistake the defendants' wrapper for the plaintiffs if shown to him some time after he had seen the plaintiffs'. After all, an ordinary purchaser is not gifted with the powers of observation of a Sherlock Holmes. ..."*
>
> *(Emphasis Supplied)*

48. ***Parle*** (supra) was a case of infringement of a registered wrapper. The Supreme Court held that a wrapper of practically the same size, colour scheme and broad design as the registered one infringed it, though the two were not identical. The test it laid down, of overall similarity judged from the point of view of a purchaser who does not compare the two side by side, applies with equal force when a court compares two get-ups in an action for passing off. The Bombay High Court applied the same test to the shapes of rival vodka bottles in ***Gorbatschow*** (supra), holding in paragraph 18 that "*what the Court must consider, prima facie, at this stage, are the broad and salient features of the two rival shapes. A meticulous attempt to find differences in the two shapes on a comparison side by side is impermissible*."

49. This does not mean that the differences pointed out by the defendant are to be ignored. In ***S.M. Dyechem Ltd. v. Cadbury (India) Ltd.***,[18] the Supreme Court held that differences in essential features are also relevant. However, in ***Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.***,[19] the Supreme Court disagreed with the weight that ***S.M. Dyechem*** (supra) had placed on such differences, observing:

[18] (2000) 5 SCC 573.
[19] (2001) 5 SCC 73.

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> *"We are unable to agree with the aforesaid observations in Dyechem's case (supra). As far as this Court is concerned, the decisions in the last four decades have clearly laid down that what has to be seen in the case of a passing off action is the similarity between the competing marks and to determine whether there is likelihood of deception or causing confusion. ..."*

50. In ***Allied Blenders*** (supra), this Court considered both these decisions while dealing with an argument identical to the one made by the defendant here, and held:

> *"49. ... Regarding the Defendant's argument emphasizing the dissimilarities between rival marks ought not to be ignored, the law is well settled. The Supreme Court in S.M. Dyechem (supra) and Cadila Healthcare v. Cadila Pharmaceuticals [2001 (5) SCC 73] emphasized that the test is of overall similarity. Further, the comparison is not to be done side-by-side, but the test is of imperfect recollection. It is to be kept in mind that consumers have hazy memories and most often the intricate differences are not usually discernible. This is also clear from the extracts from Kerly's Law of Trademarks' and the Law of Passing Off by Christopher Wadlow, which have been cited on behalf of the Defendant themselves.* ***Thus, the merely display of brand names would not obviate the confusion as to connection, business affiliation, etc. and due to overall similarity in the labels, confusion could be caused.****"*
>
> *(Emphasis Supplied)*

51. The differences are, therefore, to be weighed against the similarities, and the question is which of the two governs the overall impression. The defendant relies on ***Pernod Ricard*** (supra), where the Supreme Court declined an injunction. The Supreme Court held in paragraph 35.7:

> *"35.7. Applying these principles, it becomes evident that the rival marks are not deceptively similar. The appellants' trademarks – 'BLENDERS PRIDE', 'IMPERIAL BLUE', and 'SEAGRAM'S' – convey distinct commercial impressions, when compared with the respondent's mark 'LONDON PRIDE'. The overall visual appearance, phonetic structure, and trade dress – though sharing some generic elements such as use of blue and gold – are sufficiently different.* ***These structural and conceptual dissimilarities between the marks outweigh any incidental similarities****, negating the likelihood of confusion in the mind of a consumer of average*

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intelligence and imperfect recollection."

(Emphasis Supplied)

52. The test applied in ***Pernod Ricard*** (supra) is, thus, whether the dissimilarities outweigh the similarities. In that case they did: the only thing in common was the laudatory word 'PRIDE' and generic elements such as blue and gold, while the dominant words, the packaging, the typography, the bottle and the label layout were all different. The appellants there also tried to build a case by combining features of two different marks of their own.

53. In the present case the position is the reverse. The features the two share are the very features that form the first impression of a bottle on a shelf or behind a counter: the silhouette, the black cap, the black-and-white look, the large black device at the top centre, and the 'LONDON DRY' over 'GIN' arrangement. The differences listed by the defendant, namely the copper band, the gold ornament, the vertical panel, the inversion of the colour of 'GIN', the embossing and a difference of a few millimetres in height and width, are matters of detail that come to notice only when the two bottles are held side by side and studied. Here the similarities outweigh the dissimilarities.

54. In ***Allied Blenders*** (supra), the defendant had placed before the Court a chart of differences between the rival labels, much as the defendant has done here. The Court observed:

> *"56. A perusal of the above chart shows that the so-called differences actually establish a broad similarity. ...*
>
> *57. The Court is convinced, prima facie that there is a clear attempt to indulge in "smart copying" which in the opinion of the Court would still be copying. The chart of differences, in fact, shows that extraordinary*

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> *effort has been put by the Defendant in identifying the differences.* ***The broad similarities are so obvious at the first look, the differences are nudged into oblivion.***
>
> *58. In Baker v. Master Printers Union of New Jersey, [47 USPQ 69 (D.N.J.1940)], it has been appropriately observed as follows:*
>
> *"The most successful form of copying is to employ enough points of similarity to confuse the public with enough points of difference to confuse the courts. Few would be stupid enough to make exact copies of another's mark or symbol."*
>
> *(Emphasis Supplied)*

The same is true of the present case. The broad similarities between the two bottles are obvious at the first look, and the differences are nudged into oblivion.

55. The defendant's strongest point is that its brand name 'iQ' appears prominently on its label, and that in passing off, added matter such as a different name can be enough to distinguish the goods (***Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories***[20]). The added matter must, however, be sufficient to dispel the deception that the get-up creates. Where the get-up of the plaintiff is taken over, the rival's name placed on it does not always do so. This Court explained this in ***Seven Towns*** (supra):

> *"60. The second submissions of the defendants have also no force when it is argued that by affixing their own label on the trade-dress as the defendants have taken steps to distinguish the goods. In Reckitt & Colman v. Borden, (1990) R.P.C. 341 the House of Lords, while elaborating upon the fundamental principle that "no man may sell his goods under the pretence that they are the goods of another", held that "where a particular get-up of goods has been for a long time, for many years, on the market so as to become identified in course of time with the plaintiff's goods . . . in such a situation the label plays only an ancilliary part in the get-up."*

[20] 1964 SCC OnLine SC 14.

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> *61. It has been accepted by the House of Lords that if the defendant attaches his own label to the prior user's trade dress then in such event far from serving to distinguish the goods, the label would actually tantamount to "..a deliberate appropriation of that get up as their own". In other words, merely using their own label on the plaintiffs' trade dress not only causes deception but also has the consequence of diluting the plaintiffs' goodwill in the trade dress."*

56. In the present case, the name 'iQ' is not set apart from the get-up; it is placed inside the very rhombus that occupies the position of the plaintiff's '>'. To a consumer who knows the plaintiff's bottle by its look, the iQ bottle presents the same look with a different device at the top. As discussed in Part VII below, a consumer familiar with the plaintiff's practice of releasing new editions in the same bottle is likely to read that difference as a variation by the plaintiff itself, and not as a sign of a different source.

57. A recent decision of the Court of Appeal of England and Wales, which concerned gin bottles, illustrates the same reasoning. In ***Marks and Spencer plc v. Aldi Stores Ltd.,***[21] Marks and Spencer sold gin-based liqueurs in a decorated bottle containing gold flakes and a light in its base, and held registered designs for that bottle. Aldi launched a rival gin liqueur in a similar decorated bottle, bearing its own brand 'The INFUSIONIST'. The trial judge had held that Aldi's bottle did not produce a different overall impression, and his reasoning, set out in paragraph 39 of the judgment of the Court of Appeal, reads in part as under:

> *"80. The features that the informed user would note as being in common between the RDs in suit and the Aldi bottle are these:*
>
> *(1) The identical shapes of the two bottles. The informed user would pay little attention to the fact that both have in part straight sides. That is true of the vast majority of the spirit bottles shown in the evidence. … However,*

[21] [2024] EWCA Civ 178.

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this would not detract from the apparent identicality in shape when measured against the design corpus as a whole.

…

81. In my judgment and with the design corpus in mind, each of those similarities would appear significant to the informed user and cumulatively they would be striking.

82. There are differences. Aldi relied on these: … (2) The Aldi bottle has the "Infusionist" branding. The RDs in suit have none. …

83. Going back to the statutory test, it is whether the RDs in suit and the Aldi bottles produce a different overall impression. In my judgment they do not because of the features they have in common, set out above. ***The differences to which Aldi points are there, but they are differences of relatively minor detail which do not affect the lack of difference in the overall impressions produced by the Aldi bottles on the one hand and each of the RDs in suit on the other.****"*

(Emphasis Supplied)

58. The Court of Appeal upheld this conclusion. It also rejected Aldi's argument that too much weight had been given to the shape of the bottle, which was protected by a registered design held by the maker of the bottles, holding in paragraph 63 that *"[t]he fact that the shape of the bottle was protected by a third party registered design is irrelevant apart from the fact that the design therefore formed part of the design corpus which the judge took into account.*" The bottles of the two parties, as reproduced in the judgment, are shown below:

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Marks and Spencer's registered designs (paragraph 5 of the judgment):

UK Design Number	Illustrations
6134278 ("**UK 78**")	
6134280 ("**UK 80**")	
6134282 ("**UK 82**")	
6134284 ("**UK 84**")	

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Aldi's products complained of (paragraph 6 of the judgment):

59. ***Marks and Spencer*** (supra) was decided under the law of registered designs, and the comparison there was made through the eyes of the 'informed user', who, as the Court of Appeal noted in paragraph 31, pays a relatively higher degree of attention than the average consumer of trade mark law. Even so, a prominent brand name on the rival bottle was held not to change the overall impression created by a copied shape and decoration. The reasoning applies with greater force in passing off, where the comparison is made through the eyes of an ordinary consumer with imperfect recollection.

60. For these reasons, this Court is *prima facie* of the view that the overall get-up of the defendant's iQ gin, namely its bottle together with its trade dress, is deceptively similar to that of the plaintiff's GREATER THAN gin, and the similarities outweigh the dissimilarities.

VII. THE CLASS OF CONSUMERS AND THE KIND OF CONFUSION

61. The likelihood of deception must be judged in the light of the goods, the purchasers and the way in which the goods are bought. In ***Cadila*** (supra), the Supreme Court set out the following factors for deciding deceptive similarity in an action for passing off:

> *"35. Broadly stated in an action for passing off on the basis of unregistered trade mark generally for deciding the question of deceptive similarity the following factors to be considered:*
>
> *a) The nature of the marks i.e. whether the marks are word marks or label marks or composite marks, i.e. both words and label works.*
>
> *b) The degree of resembleness between the marks, phonetically similar*

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and hence similar in idea.

c) The nature of the goods in respect of which they are used as trade marks.

d) The similarity in the nature, character and performance of the goods of the rival traders.

e) The class of purchasers who are likely to buy the goods bearing the marks they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and/or using the goods.

f) The mode of purchasing the goods or placing orders for the goods and

g) Any other surrounding circumstances which may be relevant in the extent of dissimilarity between the competing marks."

62. Here, the goods are identical: both are London Dry gins, sold in 750 ml bottles through the same liquor shops and bars, in the same States. Relying on ***Khoday Distilleries*** (supra) and paragraph 46 of ***Pernod Ricard*** (supra), the defendant contends that gin is bought by discerning consumers who ask for it by name. The decision in ***Pernod Ricard*** (supra) concerned premium and ultra-premium whiskies. Here, the prices placed on record by the plaintiff (paragraph 43 of the plaint) show both gins being sold at overlapping prices in the range of about ₹800 to ₹1,500 per bottle, and in some States at the same price. These are not goods bought only by a narrow class of connoisseurs. In any event, the Bombay High Court in ***Gorbatschow*** (supra) explained why the class of purchasers is not by itself an answer:

"24. ... The submission involves a basic fallacy. The fallacy lies in assuming that while those who are educated or affluent have the ability to discern, since they have higher disposable incomes, persons who do not belong to that category are more likely to be deceived. Gullibility as a trait of human character does not necessarily possess social or economic attributes. ... The Court will not readily assume that because consumers of premium goods and services have higher disposable incomes or, as the defendant states are educated, that the likelihood of deception is minimal. If the law were to accept such a position, it would only open a pathway for

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> *deceit. Less than honest competitors in business would carefully grind away at the features of an existing mark with an established reputation so that eventually nothing will be left of the uniqueness of the mark. The protection of intellectual property will be a writ in sand if such a submission is accepted. The class of purchasers is undoubtedly a relevant consideration, but the Court must have due regard to all the relevant circumstances including that."*

63. The manner of sale of liquor is also relevant. Advertising of liquor is restricted, and the bottle on the shelf is often the main point of contact between the brand and the buyer. The Supreme Court itself noted in paragraph 49 of ***Pernod Ricard*** (supra) that "in the liquor industry, where advertising is highly restricted, brand recognition rests predominantly on packaging and consumer loyalty". Liquor is commonly bought across a counter, with the bottles displayed behind it at a distance, or ordered at a bar. The circumstances in which such confusion arises were explained in ***Allied Blender***s (supra) as under:

> *"43.* ***Confusion need not be between products but could also be one of affiliations, sponsorship or connection as well. A consumer might presume that the Defendant's product is a differently priced product, emanating from the Plaintiff.*** *Moreover, the Court has to put itself in a realistic position to see the manner in which bottles are stacked in bar counters. These venues are typically not brightly lit and are usually dimly lit. In such a setting, if a consumer orders the Plaintiff's product and the bartender serves the Defendant's product, owing to the broad similarity of the labels, the consumer may not even be able to tell that the product served is that of the Defendant's and not of the Plaintiff's. This likelihood of confusion is further heightened by the distance at which customers typically view bottles in a bar. This is not to say that a connoisseur of such products may not be able to discern the difference after tasting them! But the test is not of the standard of a connoisseur but that of an ordinary consumer or lay-person. Even the purchase at liquor outlets would include by consumers who could be from varying strata of society and may not be able to discern fully the distinguishing features.* ***Confusion as to affiliation or sponsorship is a clear possibility.****"*
>
> *(Emphasis Supplied)*

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64. These observations apply squarely to the present case. A consumer who sees the iQ bottle at a distance, behind a counter or on a bar shelf, sees the same silhouette, the same black cap, the same black-and-white dress and a large black device at the top centre. The confusion is not limited to a mistaken purchase. A consumer may well think that iQ gin is another product of the makers of GREATER THAN, or one made with their approval, which is confusion as to affiliation, sponsorship or connection.

65. The confusion in this case is also not limited to the consumer of average intelligence and imperfect recollection. It reaches the plaintiff's loyal consumers as well. The plaintiff has, over the years, released special editions of its gin in the same bottle, with the same size and position of the label, while changing the name, colours and design of the label. A regular buyer of GREATER THAN has, therefore, learnt to expect new editions of the plaintiff's gin in this very bottle, with a different label. When such a buyer comes across iQ gin in the same bottle and the same broad dress, the different device and name on it are likely to be taken as yet another edition from the same maker. As the Supreme Court noted in ***Parle*** (supra), quoting Kerly, "*variations in detail might well be supposed by customers to have been made by the owners of the trade mark they are already acquainted with for reasons of their own*." The very familiarity of the loyal consumer with the plaintiff's range makes him more, and not less, likely to be misled.

66. The Spencer's listing shows that this is not a mere apprehension. On 21.03.2024, the online store of Spencer's, a retail chain, listed the defendant's iQ gin with the description of the plaintiff's GREATER THAN gin. Spencer's is not a casual buyer; it is a member of the trade, which deals

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with both products and is expected to know them. If a retailer could link the two products in this manner, the likelihood of an ordinary consumer doing so is all the greater. That the listing was corrected later, after the suit was filed, does not wipe out the fact that the confusion occurred.

67. It is also well settled that initial interest confusion, which arises before the purchase even if it is cleared up at the time of purchase, is actionable (***Shree Nath Heritage Liquor Pvt. Ltd. v. Allied Blenders & Distillers Pvt. Ltd***.[22]; ***Allied Blenders*** (supra), paragraphs 51 and 61; ***WOW Momo Foods Pvt. Ltd. v. Wow Burger***[23]). The record further shows that consumers keep the plaintiff's empty bottles at home for re-use, so the bottle continues to be seen long after the sale. Confusion can, thus, arise before, at and after the point of sale.

68. This Court is, accordingly, *prima facie* satisfied that the use of the impugned get-up by the defendant is likely to cause confusion and deception, including confusion as to affiliation, sponsorship or connection, among ordinary consumers as well as among the plaintiff's loyal consumers and the trade.

VIII. THE CONDUCT OF DEFENDANT IN ACHIEVING THE IMPUGNED GETUP

69. Though an intention to deceive is not a necessary ingredient of passing off, the reason why a defendant chose a particular get-up is always relevant, and the absence of a plausible explanation weighs in the balance (***Gorbatschow*** (supra), paragraph 22). The defendant's only explanation is

[22] 2015 SCC OnLine Del 10164.
[23] FAO(OS)(COMM) 143/2025, decided on 16.10.2025 (DB).

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that the bottle is a generic one that is freely available, and that the use of 'IQ' for gin is a natural extension of its beer brand. Neither explains why, out of all available bottles and all possible dresses, the defendant chose this particular bottle dressed in this particular manner. The defendant's own other gins, 'BIG BEN LONDON' and 'JAMUN', are sold in different bottles with different dress.

70. The plaintiff has also relied upon an internal email of M/s PGP Glass, a bottle manufacturer, bearing the subject "Mohan Meakin : Gin-1 Bottle". According to the plaintiff, the email records that PGP Glass refused to develop for the defendant a bottle that looked like the plaintiff's 750 ml bottle. The email reads:

> *"Dear Rashmin,*
>
> *As informed to you we are not going to develop any bottle look a like to 750 ml Nao Spirits (750 ml Greater Than Gin)*
>
> *Yesterday Mr. K K Dhar form Mohan Meakin has visited to our office and I clearly inform him that we can't do any bottle look like to 750 ML NAO Spirits, as it is against our company policy.*
>
> *So request you to don't process any NPD request without my confirmation on this project."*

71. Along with the email, the plaintiff has placed on record a technical drawing of PGP Glass (Drawing No. J-541G, 'Proposal-03') for a "750 ML GIN ONE" bottle. The word "IQ" is written on it by hand, and the base carries the engraving "MOHAN MEAKIN LTD. ESTD. 1855". The drawing records that the bottle was designed on 04.09.2021 and revised on 21.02.2022 and 15.03.2022. The plaintiff relies on these revisions to contend that, at one stage, the bottle being designed for the defendant had the same

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height as its own bottle.

72. The defendant in para. 47 of the written statement has categorically denied the email and has called it misleading and irrelevant. It has, further, pointed out that the email is undated and cropped, and that the date box on the drawing has been scribbled over. Whether the email is genuine, when it was written, what it records and what weight it deserves, and the same questions about the drawing are disputed questions of fact. They can be answered only upon evidence at trial. At the present stage, therefore, much reliance cannot be placed on this purported email.

73. This Court is conscious that the email, so presented, is contested, as are certain other facts in this case. A contested document of this kind cannot serve as a standalone ground for relief. This Court, therefore, does not rest its view solely on the email, or on the inferences that the plaintiff seeks to draw from the drawing, and leaves every question about them open for trial. The findings of deceptive similarity in Part VI and of likelihood of confusion in Part VII above do not depend on these documents. Those findings rest on a comparison of the two get-ups and on the material discussed in those Parts. The circumstances that follow are considered only as further support for that view.

74. The small changes in height and width, made in the course of the design, do not alter the overall look of the bottle, as already found in Part VI above. As this Court noted in ***Seven Towns*** (supra), paragraph 72, quoting ***Parle*** (supra), a defendant may first take a get-up and then introduce "variations in detail".

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75. There are other circumstances that point the same way. The plaintiff has pleaded, in paragraph 41 of the plaint, that the defendant launched iQ gin quietly, without any public announcement, and that the defendant's own website does not even list gin among its products, although it lists rum, whisky and beer. The device that the defendant has used for IQ beer since 1996 is green with a gold strip. When the defendant extended IQ to gin, it did not carry this device over. Instead, it adopted a black-and-white scheme and placed a black rhombus at the top centre of the label, the very position in which the plaintiff's '>' appears.

76. The defendant's plea of a natural brand extension also does not sit well with the history of the mark. If the mark 'IQ' had been in constant use in the defendant's business since the 1990s, as it claims, it is difficult to understand how a company of the defendant's size and experience did not renew its registration for a considerable period of time, and then, years later, placed the mark on a gin dressed in the manner of the plaintiff's gin. Whatever the reason, this circumstance weakens the claim that the impugned get-up was adopted only to extend an existing brand.

77. The defendant relies on paragraph 49 of ***Pernod Ricard*** (supra), which reads as under:

> *"49. In the liquor industry, where advertising is highly restricted, brand recognition rests predominantly on packaging and consumer loyalty.* ***Unless the imitation is deliberate and intended to mislead, the chance of confusion is minimal. The allegation of counterfeiting in the present case appears to be speculative and unsupported by credible evidence.****"*
>
> *(Emphasis Supplied)*

78. The Supreme Court thus required credible evidence of deliberate

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imitation, and found none on the record before it. In the present case, there is such evidence: the drawing showing the defendant's bottle being designed during the same period, at one stage with the same height as the plaintiff's; the quiet launch, without any mention of gin on the defendant's own website; the departure from the defendant's own green-and-gold IQ device in favour of black and white, with a black device in the plaintiff's position; the contested email of the bottle maker recording its refusal to make for the defendant a bottle that looked like the plaintiff's and the Spencer's listing. Taken together, these circumstances *prima facie* show that the imitation was deliberate.

79. In ***Seven Towns*** (supra), paragraph 50, this Court quoted with approval the following observations from ***Colgate Palmolive Co. v. Anchor Health and Beauty Care Pvt. Ltd.***[24]:

> *"It is so easy for the honest businessman, who wishes to sell his goods upon their merits, to select from the entire material universe, which is before him, symbols, marks and covering which by no possibility can cause confusion between his goods and those of his competitors, that the courts look with suspicion upon one who, in dressing his goods for the market, approaches so near to his successful rival that the public may fail to distinguish between them".*

80. The defendant, an established trader with several brands, had the whole range of bottles and designs open to it. It chose to come as near to the plaintiff's get-up as it did. Where dishonesty is shown, the Court pays greater attention to the points of similarity and less to the points of difference (***Munday v. Carey***[25], as quoted in ***Seven Towns*** (supra), paragraph 51). This lends further support to the finding in Part VI above.

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[24] 108 (2003) DLT 51.
[25] (1905) 22 RPC 273.

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IX. THE REMAINING OBJECTIONS OF THE DEFENDANT

81. *Excise approvals:* The defendant contends that it has held excise approvals for the iQ gin label since 22.06.2023, that both products appear in the same state excise lists, and that the plaintiff never objected. This does not advance its case. The state excise lists placed on record show only the names of the brands; they do not publish the shape of the bottle or the trade dress. An approval of a label by an excise authority is granted for the purposes of excise law; it neither decides nor confers any right against another trader under the law of passing off. Moreover, the plaintiff has no objection to the name 'IQ' itself, as it has stated in its rejoinder note. A list showing the name 'IQ' gave the plaintiff no reason to object. ***Rhizome Distilleries Pvt. Ltd. v. Pernod Ricard S.A. France***[26], on which the defendant relies, turned on its own facts, where an objection before the excise authority had been raised and withdrawn with full knowledge of the impugned product. No such facts exist here.

82. *Third-party bottles:* The defendant has placed on record bottles from various parts of the world and the catalogues of glass makers, mostly in China. Most of these bottles are used outside India, and some carry no date of use. Goodwill in passing off is territorial (***Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries Ltd.***[27]), and what matters is the get-up that Indian consumers see. A glass maker's catalogue shows only that the bottle can be bought, not that it is used in India for gin in a get-up like the plaintiff's. The two Indian products cited, Haku vodka and Indri whisky, are

[26] 2009 SCC OnLine Del 3361.
[27] (2018) 2 SCC 1.

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different spirits in a different dress, and the defendant has not shown that their get-up is close to the plaintiff's. The Court of Appeal in ***Marks and Spencer*** (supra) found it irrelevant that the bottle shape itself was the subject of a third party's registered design. In any case, a plaintiff is not bound to sue every infringer. In ***Reckitt and Colman Overseas*** (supra), this Court held:

> *"23. The Defendant's reliance on third-party material does not disentitle the Plaintiffs as the Plaintiffs are not required to sue every small infringer as held in Pankaj Goel (supra), Corn Products (supra) and National Bell (supra)."*

X. PRIMA FACIE CASE BALANCE OF CONVENIENCE, IRREPARABLE HARM AND THE FORM OF RELIEF

83. During the plaintiff's rejoinder submissions, the Court put a specific question to learned Senior Counsel for the plaintiff: whether the plaintiff would object to the defendant continuing to sell gin under the mark 'IQ' in a different bottle. Learned Senior Counsel answered that the plaintiff has no reservation if the overall get-up, including the shape of the bottle along with the label, its font and its placement, is changed. The same stand is recorded in the plaintiff's rejoinder note, which states that the plaintiff "does not have any issue" with the defendant's iQ device as used for beer, and that the defendant "can continue to use the said Mark/Device for its gin, so long as the overall similarity/get-up of the gin bottle including the bottle shape is modified by the Defendant".

84. This stand confirms that the relief need not, and should not, shut the defendant out of the gin market. Relief in passing off can be moulded so as

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to permit continued use by the defendant without misrepresentation (***Pernod Ricard*** (supra), paragraph 36.1). Courts have moulded relief in this way in similar cases. In ***Gorbatschow*** (supra), the *ad interim* order made it open to the defendant to market and sell its vodka under its own mark, but in "a distinct shaped bottle and packaging". In ***Allied Blenders*** (supra), the injunction expressly did not preclude the defendant from using the red and white colour combination "in a manner so as to not cause any confusion or deception or be imitative of the Plaintiff's mark/label". In ***Seven Towns*** (supra), the Court declined to pass upon a changed version proposed by the defendant, leaving any complaint about it to be decided when it arises.

85. For the reasons recorded in Parts V to VIII above, the plaintiff has made out a strong *prima facie* case of passing off in respect of the overall get-up of the defendant's iQ gin.

86. The balance of convenience is also in favour of the plaintiff. The plaintiff has used its get-up since 2016 and has built its goodwill on it. The defendant entered the market with the impugned get-up only in August 2023. The defendant is an established company with several brands and a large turnover. The order proposed does not stop it from selling gin, or from using the mark 'IQ'; it only requires the defendant to sell its gin in a get-up of its own. The inconvenience to the defendant of changing the dress of one product is far less than the harm to the plaintiff if the impugned get-up continues in the market during the pendency of the suit. Public interest also lies in ensuring that consumers are not misled about the source of what they buy.

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87. The plaintiff would also suffer irreparable harm if the injunction is refused. Continued use of the impugned get-up would erode the distinctiveness of the plaintiff's get-up and would expose the plaintiff's reputation to a product over whose quality it has no control. Such harm cannot be measured or compensated in money (***Pernod Ricard*** (supra), paragraph 36.3(iv), extracted in paragraph 29 above).

E. CONCLUSION AND DIRECTIONS

88. In view of the above, the application is allowed in the following terms.

89. Till the disposal of the suit, the defendant, its directors, officers, servants, agents, distributors, dealers and all others acting for or on its behalf are restrained from manufacturing, bottling, selling, offering for sale, distributing, displaying or otherwise dealing in gin in the impugned get-up, namely the bottle together with the trade dress depicted in paragraph 10 above, or in any other get-up that is deceptively similar to the overall get-up of the plaintiff's 'GREATER THAN' gin, so as to pass off its goods as those of the plaintiff or as connected with the plaintiff.

90. It is clarified that:-

90.1 The defendant is not restrained from using the mark 'IQ' or its iQ device for gin or for any other goods;

90.2 The plaintiff has no monopoly over the colours black and white, and the defendant is free to use them in a manner that does not result in a get-up deceptively similar to that of the plaintiff;

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90.3 The defendant is at liberty to sell its gin in a different get-up. The new get-up must differ not merely in the shape of the bottle, but also in its dress, that is, the size and placement of the label, the colour arrangement, the placement of the device, and the typography and arrangement of the words on the label, so that the overall get-up, seen as a whole, is not deceptively similar to that of the plaintiff; and

90.4 This Court has not examined any get-up other than the impugned one. If the plaintiff has a grievance about any new get-up adopted by the defendant, it shall be open to it to seek its remedies in accordance with law.

91. Considering that the products are liquor products, sold through licensed channels under state excise regimes, the following directions are issued regarding the existing stock:

91.1 The defendant shall, within two weeks from today, file an affidavit disclosing (i) its stock of iQ gin in the impugned get-up as on today, whether at its premises, with its distributors, at depots or in transit; (ii) its stock of empty bottles of the impugned design, and of labels and packaging material of the impugned trade dress; and (iii) its sales of iQ gin in the impugned get-up from its launch till today.

91.2 From today, the defendant shall not manufacture or bottle any fresh stock of gin in the impugned get-up, and shall not place any fresh order for bottles of the impugned design or for labels of the impugned trade dress.

91.3 The defendant is granted thirty days from today to exhaust the existing stock disclosed under clause (a). On the expiry of thirty days, the

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defendant shall ensure that the impugned product is removed from the shelves of the retail/wholesale outlets supplied by it or through its distributors.

91.4 Any stock that remains unsold after thirty days shall be withdrawn by the defendant and shall not be sold in the impugned get-up. The defendant shall be free to re-bottle and re-label such stock in a get-up that complies with paragraph 90.3 above.

92. The findings in this judgment are *prima facie* and are recorded only for deciding the present application. They shall not bind the Court at the final hearing of the suit. As already stated above, they shall also have no bearing on the proceedings pending before the Registrar of Trade Marks in respect of the marks of either party, which shall be decided on their own merits.

93. The application bearing I.A. 35992/2024 stands disposed of in the above terms.

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94. List before the Joint Registrar on 25.01.2027 for further proceedings.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

NOVEMBER 26, 2026
NK.

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