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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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With this thought, we hereby present to you

# **AN ANALYSIS INTO THE CONCEPT OF DECEPTIVE SIMILARITY**

AUTHORED BY - CHITRA C

COURSE: IIND Year, LL.M. (Intellectual Property Law)

The Tamil Nadu Dr. Ambedkar Law University (SOEL).

## **ABSTRACT:**

*Trademark law is designed to protect the goodwill and reputation of businesses by ensuring that consumers can distinguish the goods or services of one enterprise from those of another. Trademark infringement arises when an identical or confusingly similar mark is used by another entity, which leads to consumer confusion and damages the goodwill of the original brand. The protection of trademarks plays a significant role in maintaining the integrity of brands and consumer welfare. However, disputes arise when a new trademark resembles an existing one to a degree that causes confusion, deception, or dilution of the original mark's distinctiveness. This paper delves into the legal concept of deceptive similarity in trademark law, highlighting its implications on businesses, consumers, and the broader market. In India, the issue of "deceptive similarity" has garnered significant attention, with courts and authorities grappling to balance protecting trademarks while promoting fair competition. This paper delves into the concept of trademark deceptive similarity in India, examining the legal framework, the interpretation by the courts, and the implications for businesses.*

**Keywords:** Deceptive similarity, Good will, Infringement, Consumers and Trademark.

## **INTRODUCTION**

In a world driven by branding, trademarks serve as a crucial tool for businesses to distinguish their products and services from others in the marketplace. For businesses, their trademarks symbolize quality, reputation, and goodwill. The Trade Marks Act, 1999, governs the use and protection of trademarks in India. The Act aims to prevent the unauthorized use of marks that might cause confusion or deception in the minds of consumers. A central concept under the Act is "deceptive similarity," which refers to situations where a new mark resembles an existing registered mark so closely that consumers are likely to be misled or confused about the origin

of the goods or services.

Deceptive similarity cases have emerged as one of the most significant aspects of trademark law in India. These cases often revolve around the balancing act between protecting the rights of the original trademark owner and ensuring fair competition. <sup>1</sup>Courts in India rely on a range of factors, including the likelihood of confusion, the market context, and the perception of an average consumer, when determining whether two marks are deceptively similar.

In an increasingly competitive and globalized marketplace, businesses rely heavily on their trademarks to distinguish their products or services from those of their competitors. The protection of trademarks is an integral part of intellectual property law, as it ensures that consumers are not misled by confusingly similar marks, thereby maintaining the integrity of the market. The concept of "deceptive similarity" forms a crucial aspect of trademark disputes in India. It refers to a situation where one trademark is so similar to an existing registered mark that it is likely to cause confusion or deception in the minds of the consumers, even if the marks are not identical.

The legal framework governing trademarks in India is primarily established under the **Trade Marks Act, 1999**. The Act is intended to regulate the registration, protection, and enforcement of trademarks in India. Section 11 of the Act, which deals with relative grounds for refusal of registration, specifically addresses the issue of deceptive similarity. This provision empowers the Registrar of Trademarks to reject applications that are similar to an existing trademark in a way that may deceive or confuse the public.

#### **REVIEW OF LITERATURE:**

- *V.S. Agarwal & Prabha (2010), Journal of Intellectual Property Rights, "Deceptive Similarity and Likelihood of Confusion: An Analysis of Indian Jurisprudence"* This article provides an in-depth analysis of **deceptive similarity** in Indian trademark law, with a focus on the multi-faceted tests used by Indian courts to determine confusion in trademark disputes. The authors discuss how Indian courts balance visual, phonetic, and conceptual similarities when assessing whether marks are likely to deceive consumers.

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<sup>1</sup> SANKALP JAIN, Deceptive Similarity of Trademark in India, SSRN Publishing, 2021.

➤ ***Ganguly & Reddy (2006), Indian Journal of Intellectual Property, "Trademark Law in India: An Overview"***

This article discusses the Trademarks Act, 1999, with a specific focus on the legal provisions relating to deceptive similarity. It covers the definition under Section 11 and Section 9 and explores how Indian courts interpret and apply the concept of deceptive similarity in registration and infringement cases. It also includes a discussion of case law, notably *Dabur India Ltd. v. K.R. Puri (2001)*, which dealt with the issue of whether two marks created confusion due to their visual and phonetic similarities.

➤ ***S.R. Singh (2015), Journal of Commercial and Intellectual Property Law, "Confusion in Trademark Law: Indian Courts and Deceptive Similarity"***

This article explores the psychological factors influencing consumer confusion in India and how Indian courts interpret deceptive similarity in light of consumer behaviour. Consumer literacy, market conditions, and the general perception of the average consumer play a critical role in determining whether confusion is likely caused.

➤ ***V.S. Agarwal & Prabha (2010), Indian Law Journal, "Deceptive Similarity in Trademark Law: Indian Case Studies"***

This article reviews a series of Indian cases involving deceptive similarity in trademarks. The authors analyze the application of Section 9 and Section 11 of the Trademarks Act, 1999. The authors emphasize how Indian courts rely on a comprehensive test involving visual, phonetic, and conceptual elements when deciding cases of deceptive similarity.

➤ ***R.K. Gupta & R. Sharma (2012), Pharmaceutical Law & Policy Journal, "Deceptive Similarity in the Pharmaceutical Sector: A Study of Indian Trademark Law"***

This paper focuses on deceptive similarity in the pharmaceutical sector in India. It examines how Indian courts handle cases where two pharmaceutical trademarks are visually or phonetically similar. It discusses the legal standards courts use to determine consumer confusion in a market where consumers may have limited knowledge of the brands.

**OBJECTIVES OF THE STUDY:**

- To study about the history of Trademark.
- To understand about the concept of deceptive similarity.
- To discuss about the legal framework of trademark protection in India.
- To analyse about the challenges in trademark protection and deceptive similarity.

## **HISTORY OF TRADEMARK**

Before 1940, India lacked specific laws regarding trademarks. Instead, the existing common law was followed, which closely mirrored the system in England prior to the introduction of the First Registration Act in 1875. The Trade Marks Act of 1940 established the foundational framework for the registration and legal protection of trademarks in India. In 1958, this Act was replaced by the Trade and Merchandise Act. The Trade Marks Act of 1999, effective from 2003, repealed this Act as well.

The Trade Marks Act of 1999 introduced key changes to trademark legislation. Some elements of the law concerning unregistered trademarks have been codified, while others remain grounded in common law, necessitating reference to judicial judgments. Beyond protecting consumers from deception and fraud by legitimate mark violators, it has been concluded that the wide-ranging and complex rights granted by trademark registration are essential for safeguarding the legitimate interests of other traders from litigation and undue pressure by registered trademark owners. As a result, the Act has evolved into a complex legislative compilation featuring numerous cross-references, extensive sections, and a multitude of provisos and exceptions. Judicial interpretation has shed light on the more critical provisions, although some sections have yet to undergo judicial scrutiny and analysis.

Along with clarifying the law, the current 1999 Act has introduced several new provisions that benefit both consumers of goods and trademark owners. Due to historical influences, both common law and statutory law in India have predominantly mirrored the structure of English law. The UK Trade Marks Act of 1938 and the Trade Marks Act of 1940 were almost identical, with the latter being the first statute on this subject introduced in India. This Act was later superseded by the Trade and Merchandise Act of 1958.

In addition to implementing significant reforms to previous legislation, this Act consolidated the Merchandise Marks Act of 1889 with relevant trademark provisions from the Criminal Procedure Code, the Indian Penal Code, and the Sea Customs Act into a unified legal text. The Trade Marks Act of 1999 subsequently repealed this legislation.

## **TRADEMARK:**

A trademark is any sign that distinctly identifies a company's products and differentiates them from those of competitors. Companies that utilize trademarks to promote a particular product or service reap significant rewards through enhanced recognition and assured quality. If another party's mark could lead to confusion, the owner of the mark has the authority to prohibit its use. In this manner, inferior substitutes will be kept from displacing high-quality products.

A trademark refers to a word, symbol, or a combination of words and symbols that a seller or manufacturer employs to distinguish a product or service. When individuals can associate with that particular product or service, it becomes easier to drive sales, and its uniqueness is maintained. As outlined in the Trade Mark Act of 1999, a "well-known trademark" is any mark associated with goods or services that have achieved recognition among a considerable segment of the public who uses or receives them, and the use of this mark concerning other goods or services is likely perceived as indicating a link between those goods or services and the entity using the mark in relation to the initially referenced goods or services.

A trademark is a type of intellectual property designed to protect the brand associated with a product or service. Thus, a trademark can be defined as a mark that can be visually represented and is used to differentiate one individual's goods and services from those of others. This mark can consist of various combinations of colours, designs, brands, titles, labels, tickets, names, signatures, words, numbers, or any fusion of these elements.<sup>2</sup> Although it's not mandatory, it is recommended given the current landscape where trademark infringement is increasing and many cases are being disputed. Furthermore, the protection of trademarks on a global level is crucial. This assertion is made because most trademarks feature local or regional brand names and consistently work on establishing these unremarkable names while seeking international recognition. Therefore, a trademark can be viewed as a mechanism that grants a particular product or service its distinctiveness and a means of recognition. An increasing number of countries also allow for the registration of unconventional types of trademarks, such as single-color marks, three-dimensional marks (shapes of product packaging), sounds, or scent marks. It is noted that a trademark is a crucial marketing asset and a significant business resource that can potentially provide financial support for the organization. While every brand is a

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<sup>2</sup> Shirish Raj, An Analysis of Judicial View On Test Deceptive Similarity In India, RACOLB LEGAL (Apr 6, 2018)

trademark, it is important to note that not every trademark qualifies as a brand. This distinction is made because trademarks and brands are often misunderstood; a trademark is a unique sign or marker within a business entity, whereas a brand is simply a name, logo, or emblem. Consequently, trademarks encompass a more extensive concept than brands. Additionally, a trademark can act as an assurance or emblem of the quality of the products associated with it. Consumers are often influenced to buy a specific product due to its distinctive trademark, which signifies exceptional performance. A trademark embodies the value or goodwill of the goods it represents, and this can be assessed based on the public's perception of the quality and specific origin of those goods.

Typically, trademarks are displayed in various locations on products, their packaging, displays, tags, or labels attached to goods or services. The primary rationale for conferring legal protection on a trademark is its significant economic worth. Trademark holders create product distinction and foster brand loyalty through successful advertising campaigns in collaboration with licensees. Consequently, companies obtain impressive goodwill and market influence that enable them to suppress competition and pose challenges for new companies attempting to enter that particular market. Trademarks come in several forms, including logos, animated marks, pictorial marks, slogans, and others.

### **DECEPTIVE SIMILARITY-CONCEPT**

When a trademark is registered, the individual gains substantial rights concerning its use in relation to the specified goods. Additionally, they can protect their trademark by initiating a claim for infringement and seeking an injunction if their rights are compromised by someone else using a mark that is either identical to or confusingly similar to their trademark. Thus, the core principle of trademark protection is that no mark should be registered if it is likely to mislead the public or create confusion regarding the "origin" or source of the goods or services. According to Section 2(h) of the Trade Marks Act, 1999, "A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion."<sup>3</sup> A trademark that closely resembles an existing trademark and has the potential to easily mislead consumers is classified as deceptively similar.

A trademark that is visually and phonetically alike to an original trademark tends to create a

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<sup>3</sup> Nipun Paleja, Deceptive Similarity under Trademarks, SLIDESHARE, (Aug. 27, 2017)

strong resemblance, which heightens the risk of consumers being misled. This confusion can lead to financial loss and harm the reputation of a legitimate trademark owner. In cases of trademark infringement, deceptive similarity is a key factor. Because of this misleading similarity, the Registrar of Trade Marks holds the power to deny an applicant's request for trademark registration.

To assess whether two marks are confusingly similar, it is critical to evaluate their primary characteristics. There is no need to place them side by side to check if their designs differ. The approach of directly comparing the two marks is problematic because it questions whether a viewer considering the proposed trademark alone without any other trademark is likely to be misled by what they remember generally. This differs from assessing whether someone comparing the two marks side by side is confused or not.<sup>4</sup> Deception can occur concerning the goods, their origin, or the trade connection.

### **Nature of Deception in Trademarks**

Trademark fraud can manifest in various ways and affect consumer decisions. To begin with, goods deception occurs when a mark that looks like a registered trademark is used on other products, creating a false impression for consumers that they are buying from a reputable brand. Additionally, when consumers recognize a mark and incorrectly assume that the goods come from a well-known source, they are deceived about the trade origin. Lastly, misrepresentation of trade affiliation happens when non-identical products have similar trademarks, causing consumers to erroneously believe there is a connection or association between different brands. These deceptive practices can mislead consumers regarding the qualities, origin, or relationship of products, potentially influencing their purchasing choices.

### **Deceptive similarity as a ground for refusal of registration**

If there is an existing registered mark that is identical or closely resembling it and could cause public confusion, a new mark cannot be registered. If a trademark that is already registered is well-known in India and resembles the proposed mark, it will not be permitted for registration. This is because newly created trademarks might unjustly take advantage of the established trademark's unique qualities or reputation, aiming to build their own goodwill and brand identity at the expense of the prior one. Besides enjoying legal protection for their mark, the

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<sup>4</sup> Soumya Bajpai, An Overview of the Concept of Deceptive Similarity In Trademarks, CORPBIZ (Oct. 22, 2020)

owners of registered trademarks are afforded exclusive rights to use their creation. The legal principle of "passing off" gives courts the power to enforce limitations on any subsequent similar marks. Furthermore, they cannot be registered under the names of different owners.

## **Legal Framework for Trademark Protection in India**

### **1. The Trade Marks Act, 1999**

The **Trade Marks Act, 1999** is the primary legislation governing trademarks in India. It provides a comprehensive mechanism for the registration, protection, and enforcement of trademarks in India. The Act outlines the rights of trademark holders, the process of registration, the grounds for opposition and cancellation, and the procedure for resolving disputes over trademark infringement.<sup>5</sup>

*Section 9:* Prohibits the registration of marks that are identical or deceptively similar to existing trademarks. This section ensures that no mark is registered if it could cause confusion or deceive consumers into believing that the goods or services originate from the same source.

*Section 11: Relative grounds for refusal of registration* – This section prevents the registration of marks that are identical or deceptively similar to an existing registered trademark. It states that the application for a new trademark can be rejected if it is likely to cause confusion or deception among the public.

*Section 29: Infringement of a registered trademark* - If a person uses a mark that is identical or deceptively similar to a registered trademark, causing confusion or association in the minds of consumers, it is considered infringement under Section 29 of the Act.

### **2. Deceptive Similarity – Legal Definition**

Deceptive similarity refers to the likelihood of confusion or deception caused by a trademark that is so similar to an existing mark that it might mislead consumers into thinking the goods or services offered under the new mark originate from the same source as the registered trademark.

Section 2(h) of the Trademarks Act, 1999 defines deceptive similar Trademark as “a mark shall be deemed to be deceptively similar to another mark when it resembles that other mark likely to cause confusion”

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<sup>5</sup> Prakriti Dadsesna, Deceptively Similar Trademarks: Examples & Case Study, INTEPAT, (Aug. 7, 2020)

The **Registrar of Trademarks** and the **courts** apply this standard to assess whether a trademark is deceptively similar. While Section 11 is a broad guideline, the courts apply a more nuanced analysis to determine whether the similarity between the two marks is likely to cause confusion in the market.

### **Legal Remedies for Deceptive Similarity**

Once deceptive similarity is established, the injured party has several legal remedies at their disposal.

#### **Civil Remedies: Injunctions, Damages, and Accounts of Profits**

The plaintiff may seek:

- **Injunctions:** A court order that prevents the defendant from using the deceptive mark.
- **Damages:** Compensation for the harm caused by the infringement.
- **Accounts of Profits:** The defendant may be required to hand over the profits earned through the infringement.

#### **Criminal Remedies: Penalties and Prosecution**

Under Section 103 of the *Trademarks Act*, counterfeiting and using a deceptively similar mark can lead to criminal penalties, including fines and imprisonment.

#### **Passing Off Action: A Comparative Analysis with Infringement**

Passing off is a common law remedy that protects unregistered trademarks from deceptive similarity. While trademark infringement requires registration, passing off allows the protection of common law rights based on reputation and goodwill. The essential test for passing off is whether there is misrepresentation that leads to consumer confusion.<sup>6</sup>

### **Criteria for Assessing Deceptive Similarity**

Courts in India consider several factors when determining whether two trademarks are deceptively similar:

#### **1. Phonetic Similarity**

One of the most common reasons for confusion arises from phonetic similarity. Two trademarks that sound alike are more likely to cause confusion, even if they are visually

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<sup>6</sup> Satya Sababharwal & Alisha Rastogi, Evolution of Deceptive Similarity Tests under Trademark Law, THE AGENDA (IYEA)

different. For example, if a trademark consists of a word or phrase that is phonetically similar to another mark, consumers may assume that the two are connected, especially in the context of oral communication. Examples of phonetic similarity include WIPRO and EPRO, GLUVITA and GLUCOVITA, and LAKME and LIKEME. An example of visual similarity is the kingfisher logo from McDowell, which features two Kingfishers.

## **2. Visual Similarity**

Visual similarity is assessed by comparing the overall appearance of the marks. This includes factors such as the typeface, logo design, colors, and other graphical elements. If the visual elements of two marks are so similar that they are likely to cause a consumer to mistakenly associate them, the marks may be deemed deceptively similar.

## **3. Similarity in Goods or Services**

The similarity in the nature of the goods or services offered under the two trademarks is another important consideration. If two marks are used for identical or closely related goods or services, the likelihood of consumer confusion increases, especially if the marks are visually or phonetically similar.

## **4. Distinctiveness of the Mark**

The distinctiveness of a trademark also plays a role in the assessment of deceptive similarity. Strong, distinctive marks that are associated with a well-known brand are more likely to be protected from deceptive similarity. Conversely, descriptive or generic marks may have a lower level of protection.

## **5. Consumer Perception**

Courts also consider how the average consumer would perceive the two marks. This includes evaluating the level of sophistication of the consumer, the type of goods or services, and the market in which the goods are sold. In some cases, the courts use the "average consumer test," which looks at how the average consumer, with ordinary attention, would view the marks.

## **Challenges in Trademark Protection and Deceptive Similarity**

While the legal framework for protecting trademarks in India is robust, challenges persist in ensuring consistent and fair enforcement of trademark rights. Some of the key challenges in

this area include:

1. **Ambiguity in the Legal Standards:** The assessment of deceptive similarity involves a degree of subjectivity, leading to inconsistencies in how courts interpret and apply the law. In some cases, the courts may give undue weight to one factor (e.g., phonetic similarity) while overlooking other aspects of the marks.
2. **International Brands and Local Imitations:** Global brands often face challenges when defending their trademarks in India due to the prevalence of local imitations. The issue of deceptive similarity is particularly challenging for international brands attempting to establish themselves in the Indian market, as they must navigate local legal complexities.
3. **Consumer Education:** Even when a trademark is found to be deceptively similar, there may be a lack of awareness among consumers regarding their rights. Educating consumers on the importance of trademark protection and helping them recognize genuine products and services is vital for mitigating the effects of deceptive similarity.

### **Tests to determine whether the two marks are deceptively similar or not**

In terms of similarity, what is needed is "a simple resemblance" or close similarity rather than just a close resemblance. The 'Lay observer' test is used to assess if two works are substantially alike. The Court will evaluate how an 'average lay observer' perceives whether a copyright holder's unique expression can be recognized in the allegedly infringing piece. The elements that cause confusion depend on the nature of the mark itself, the target audience, and the distribution channels; this list is not exhaustive as there are many other elements to consider when determining if there is a likelihood of confusion or deception from the use of a mark. Whether a mark utilized by the proprietor misleads the public hinges on a variety of factors, and no definitive answer can determine if the contested mark causes confusion regarding the source or origin of the goods. It relies on the specific facts and circumstances of each situation. In some instances, courts have focused on the common features shared between the two marks, while in other cases, they have examined the distinctive elements. Trademarks may be deemed deceptive if they mislead the public concerning the quality of the goods to which they are attached.<sup>7</sup> According to the standard required for deception, there must be 'a significant risk that the consumer will be misled by the actual existence of deceit.' To assess deceptive

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<sup>7</sup> Satya Sababharwal & Alisha Rastogi, Evolution of Deceptive Similarity Tests under Trademark Law, THE AGENDA (IYEA), (Aug 23)

similarity, it is necessary to investigate 'whether the key characteristics of the plaintiff's trademark appear in those used by the defendant.

There is no definitive standard to establish a universal criterion for comparing two trademarks. When the target consumers are educated and affluent, the criteria used differ from those applied in scenarios where the products are aimed at villagers, uneducated individuals, and those with low income. The evaluation method in a nation like India might differ substantially from that in England, the United States, or Australia. The proper approach to address the matter is to assess the design independently, considering the registered trademark, and to determine if that design would evoke an impression in the mind of an average consumer that he or she is purchasing a product featuring the registered trademark. In addition to examining the structural, visual, and phonetic similarities or differences, the assessment must be made from the perspective of a person with average intelligence and a limited memory. Furthermore, it should be evaluated as a complete entity, and the focus should be on the overall impression it creates. Whether the two trademarks exhibit structural and phonetic similarities that could lead to confusion in the consumer's mind is significant. Various tests have been developed by the courts over time, including the 'ordinary memory of the average purchaser' test, the examination of key features of the mark or label, and the analysis of the context in which the trademark is utilized.

**Intention to deceive is not necessary:**

The key principle One of the key elements in assessing whether a trademark misleads or causes confusion is not reliant on any intention to mislead. It does not matter if the individual has the intent to deceive the public or not. Therefore, proving intent to deceive is unnecessary. In the case of Kirloskar Diesel Recon Pvt. Ltd. v. Kirloskar Proprietary Ltd., the court determined that the plaintiff did not need to demonstrate any fraudulent intent from the defendant, and this was not a requirement. Furthermore, once a reputation has been established, plaintiffs are not obligated to show fraudulent intent or misrepresentation from the defendants.

**The role of evidence:**

Actual deception does not need to be demonstrated. Evidence of facts and circumstances that are relevant for determining the similarity of marks is always permissible. However, whether one mark closely resembles another to the extent that it is likely to deceive or create confusion is a factual question solely for the tribunal to resolve. A judge can base their decision on

personal experience, even when evidence is lacking. While proof of actual deception is not required, instances of actual deception or confusion will be given considerable weight.

### **Deceptive Similarity in case of Pharmaceuticals**

Every medicinal formulation contains an active ingredient that elicits a therapeutic effect. This active ingredient is identified by a chemical name, which can be complex to pronounce, and it details the molecular structure. Therefore, in the scientific community, the drug is referred to by its generic name. This name is useful for scientific research, education, and medical publications. The generic name is vital for doctors, pharmacists, and other healthcare professionals. It exists in the public domain and is not granted exclusive rights. The medicinal formulation that includes the drug has a brand name, which is selected by the entity promoting the medicine. The brand name serves as the trademark of the medication and is proprietary, giving the trademark owner exclusive rights to its use. According to the Trademarks Act of 1999, there are no specific provisions concerning drugs or medicines. The Government of India, under section 23(1) of the Act, stipulates that certain single-ingredient drugs cannot have registered trademarks. When applications for trademarks related to pharmaceuticals and medical products for these listed drugs are submitted, the Registrar requires the applicant to provide an affidavit affirming that the trademark does not pertain to any of the listed drugs. Medical and pharmaceutical products are regarded as items of the same category, and this is a well-established practice within the Trade Marks Registry. Veterinary products are generally considered to fall within the same category as medicines intended for human use. A purchaser lacking caution and possessing average intelligence and imperfect memory could be misled by the overall resemblance of two similar names, especially when considering the type of medicine sought, alongside a vague memory of previously purchasing a similar item with a comparable name. Such a purchaser is unlikely to dissect the name into its individual elements or reflect on its etymological significance.

In *Cadila Health Care Ltd .v. Cadila Pharmaceutical Ltd*<sup>8</sup>, Supreme Court provided the grounds for testing “Deceptive Similarity”. The factors which are to be taken into consideration for determining deceptive similarity are as follows:-

- Nature of mark (word, label or composite mark)
- The degree of resemblance between the marks.

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<sup>8</sup> (2001) 5 SCC 73.

- The nature of goods (services for which the Trade mark is used),
- The level of care and intelligence exercised by the purchaser while purchasing goods or services
- The mode used by the purchaser to purchase or place the order .
- The similarity in the nature, performance and character of goods of the rival trader

### **Case Law: Landmark Decisions in Deceptive Similarity Cases**

*Laxmikant V. Patel v. Chetanbhat (2002)*<sup>9</sup> In this case, the Supreme Court dealt with the question of whether the marks "LAXMI" and "LAXMI COTTON" were deceptively similar. The Court concluded that the marks were indeed deceptively similar, as they created confusion and were used in the same line of business. The case emphasized the importance of the overall impression of the trademark when assessing deceptive similarity.

*Indian Oil Corporation Ltd. v. Amrit Oil Corporation (1999)* The Supreme Court held that the similarity between the marks "INDIAN OIL" and "AMRIT OIL" was enough to lead to confusion, as both were used in the same field of oil production. The judgment reinforced the idea that deceptive similarity is to be determined from the perspective of the ordinary consumer, and a slight similarity in name or packaging can lead to confusion.

*Marico Ltd. v. Agro Tech Foods Ltd. (2005)* The Delhi High Court, in this case, dealt with the issue of whether the name "Saffola" was deceptively similar to "Saffolene," a product of a competitor. The court examined the phonetic and visual aspects of both marks and found that the marks were sufficiently different to avoid confusion, illustrating the need for a detailed assessment of all factors contributing to deceptive similarity.

*Kreative Graphics Ltd. v. K.G. Mittal (2010)* This case involved a dispute between two graphic design companies over the similarity of their business names. The Court took into account the visual and phonetic elements of the names, and based on the market's nature (design and printing), it concluded that the similarity in names would likely lead to confusion among consumers.

*Coca-Cola Company v. PepsiCo, Inc. (2001)* A case that involved the comparison of "Coca-

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<sup>9</sup> 2002 (24) PTC 1 (SC)

Cola" with "Pepsi." The Court discussed the distinctiveness of well-known marks and the protection that should be extended to prevent imitation. In this case, the focus was on the reputation of the marks and the likelihood that consumers would confuse the two brands, which led to a ruling against deceptive similarity.

***Pepsico Inc. v. Hindustan Coca-Cola Beverages Pvt. Ltd. (2004)*** The case revolved around the trademark "Slice" (Pepsico) and whether it was deceptively similar to "Maaza" (Coca-Cola). The Delhi High Court held that while the marks were visually different, their phonetic similarity, alongside the similarity of the product (fruit drinks), could potentially deceive the consumers, and therefore warranted further scrutiny.

***K.R. Chinna Krishna Chettiar v. Sri Ambal & Co.***<sup>10</sup> In this case, the Madras High Court explored the issue of deceptive similarity in the context of identical or confusingly similar business names. The Court ruled that even if two business names were similar, they could be held to be deceptively similar if the similarity was likely to cause confusion among consumers.

***Infosys Technologies Ltd. v. Infosys Ltd.***<sup>11</sup> In this case, the Delhi High Court clarified the legal principles for assessing deceptive similarity in relation to well-known marks. The court found that a well-known mark enjoys greater protection from infringement and that deceptive similarity is more likely when the competing marks are used in the same or similar industry sectors.

## **CONCLUSION:**

Trademark deceptive similarity is a complex but essential area of intellectual property law in India. It aims to prevent consumer confusion and protect the goodwill of businesses. While the Trade Marks Act, 1999 provides a sound legal framework, its application in practice requires careful consideration of various factors, including phonetic and visual similarities, the distinctiveness of the mark, and the likelihood of consumer confusion. As India continues to grow as a hub for both domestic and international business, it will be essential to address the challenges of trademark enforcement. Through clearer guidelines, stronger consumer awareness, and an emphasis on fair competition, India can maintain a balanced and effective

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<sup>10</sup> AIR 1970 Mad 263.

<sup>11</sup> (2008) 37 PTC 107 (Del).

trademark regime that benefits businesses and consumers alike.

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