



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on : 1<sup>st</sup> April, 2024  
Pronounced on : 29<sup>th</sup> May, 2024

+ **I.A. 23362/2023 in CS(COMM) 843/2023**

UNDER ARMOUR, INC.

..... Plaintiff

Through: Mr. Rishi Bansal, Mr. Mankaran Singh  
and Mr. Rishav Gupta, Advocates.

versus

ANISH AGARWAL & ANR.

..... Defendants

Through: Mr. Rajshekhar Rao, Sr. Advocate  
alongwith Mr. Samik Mukherjee, Mr.  
Manosij Mukherjee, Ms. Meherunissa  
Anand Jaitley and Mr. Rajarshi Roy,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE ANISH DAYAL**

### **J U D G M E N T**

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**I.A. 23362/2023 (Application under Order XXXIX Rules 1 & 2, CPC)**

1. This application has been filed by the plaintiff under Order 39 Rule 1&2 Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) as part of the suit filed *inter alia* under Sections 134 and 135 of the Trade Marks Act 1999 (*hereinafter referred to as "the Act"*) seeking an injunction restraining the defendants and all those acting for, or on their behalf, from selling, manufacturing, marketing and dealing in any manner with the wordmark "AERO ARMOUR" and / or "AERO ARMR" and logos



AERO ARMOUR „



“ AERO ARMOUR „

AERO ARMOUR

or any other trademarks/ labels/ tradename/ domain name which may be identical with and/ or deceptively similar to trademarks of the plaintiff, and other attendant relief.

2. While summons were issued in the suit on 23<sup>rd</sup> November 2023, when notice of this application was also issued, *ex parte ad interim* injunction was not granted at that stage. Subsequently, pleadings were completed in the application and counsels for the parties placed their respective submissions.

### **Factual Background**

3. The case of the plaintiff essentially arises from their proprietorship in the registered trademark “UNDER ARMOUR” and the device mark




both registered *inter alia* under class 25. Plaintiff claims to have been founded in the year 1996, by a young 23-year-old football player Mr. Kevin Plank, and is primarily engaged in the business of manufacture, distribution and sale of variety of goods including casual apparel, sports apparel and other related products. The brand ‘UNDER ARMOUR’ was founded by Mr. Plank, who decided to commence business from Washington D.C. The



unique selling proposition (*hereinafter referred to as “USP”*) of Mr. Plank was to make a T-shirt using moisture - wicking synthetic fabric to keep athletes cool, dry, and light. Subsequently over the years, UNDER ARMOUR started gaining reputation in America and later worldwide. In 2004, plaintiff filed its first



trademark application in India for the mark  under class 25. In 2017, UNDER ARMOUR officially entered Indian market through Amazon Fashion, and in 2019 launched its first retail store at DLF Promenade Mall in Vasant Kunj, Delhi. As of 2021, plaintiff claims to have more than 23 stores of UNDER ARMOUR in 16 cities, with plans to expand further, along with a strong online presence. The tabulation of registrations in UNDER ARMOUR family of marks has been provided by plaintiff as under:

S. No.	Trade Mark Representation	Application Number	Class	Application Date	Valid upto	Disclaimer
1.	UNDER ARMOUR	1788950	18, 25 & 28 [99 multi- class]	24/02/2009	24/02/2029	None
2.	ARMOURVENT	3970909	25	11/10/2018	11/01/2028	None




3.	ARMOURBITE	3970910	28	11/10/2018	11/10/2028	None
4.	ARMOURFLEECE	3970911	25	11/10/2018	11/10/2028	None
5.	ARMOURBLOCK	3970912	25	11/10/2018	11/10/2028	None
6.		1788951	99	24/02/2009	24/02/2029	None
7.		1317481	25	27/10/2004	27/10/2024	None
8.	MYFITNESSPAL	2463920	42	21/01/2013	21/01/2023	None
9.	UA	2084302	18	12/01/2011	12/01/2031	None
10.	UA	2084303	25	12/01/2011	12/01/2031	None
11.	UA	2084304	28	12/01/2011	12/01/2031	None
12.	UA RECORD	3274222	41	01/06/2016	01/06/2026	None
13.	UA RECORD	3274224	42	01/06/2016	01/06/2026	None
14.		3000906	09	06/07/2005	06/07/2005	None
15.	UA RECORD	3000907	09	06/07/2025	06/07/2025	None
16.		3970906	18, 25,	11/10/2018	11/10/2028	None



	अन्डर आर्मर		28 & 35			
17.	HOVR	3970908	25	11/10/2018	11/10/2028	None
18.		3970913	25	11/10/2018	11/10/2028	None
19.		3968438	18	09/10/2018	09/10/2028	None
20.	UNDER ARMOUR	4582315	09	27/07/2020	27/07/2030	None
21.		4582320	09	27/07/2020	27/07/2030	None
22.		4341044	99	07/11/2019	07/11/2029	None
23.		4278613	25	29/08/2019	29/08/2029	None
24.	<u>UNDER ARMOUR</u>	IRDI- 3574788	35	08/03/2017		None

4. It is an admitted position that plaintiff never applied for registration of just the word “**ARMOUR**” in India, however, plaintiff has registrations in trademark / labels *inter alia* “**ARMOUR**” in other jurisdictions in the world which have been tabulated by the plaintiff as under:



S. No	Trade Mark	Registration No.	Date of Application	Class	Trade Mark Office
1.	ARMOUR	3392904	02.05.2005	25	USPTO
2.	ARMOUR	4133248	19.07.2010	25	USPTO
3.	ARMOUR	3963256	01.03.2010	28	USPTO
4.	ARMOUR	011978764	12.07.2013	18,25,28	EUIPO
5.	ARMOUR	5387620	17.08.2016	35	USPTO
6.	ARMOUR	3970978	12.09.2008	25	USPTO
7.	ARMOUR	3720012	12.09.2008	25	USPTO
8.	UNDER ARMOUR	3174498	26.11.2003	18	USPTO
9.	ARMOUR	4407361	19.07.2010	25	USPTO
10.	UA UNDER ARMOUR  UNDER ARMOUR	2991124	26.11.2003	18	USPTO
11.	ARMOUR FLEECE	585686	16.04.2009	25	SWITZERLA ND
12.	UNDER ARMOUR	277717	22.06.2015	35	ISRAEL



13.	ARMOUR FLEECE	TMA765382	05.12.2008	25	CANADA
14.	UNDER ARMOUR	TMA809028	14.05.2009	09,14,16 ,18,21,2 2,24,25, 28	CANADA
15.	UNDER ARMOUR	TMA605031	19.09.2002	09,25,35	CANADA
16.	GAMEDAY ARMOUR	4094318	02.06.2010	25	USPTO
17.	UNDER ARMOUR	3851123	04.06.2009	41	USPTO
18.	UNDER ARMOUR	3944542	12.06.2007	28	USPTO
19.	UNDER ARMOUR	3642614	10.10.2008	25	USPTO
20.	UNDER ARMOUR	3901624	21.09.2009	09	USPTO
21.	UNDER ARMOUR	056785	18.12.2007	18,25	SERBIA
22.	UNDER ARMOUR	3500322	20.07.2005	09	USPTO
23.	UNDER ARMOUR	33747	03.10.2014	25	LAO PEOPLE'S DEMOCRATI C REPUBLIC
24.	UNDER ARMOUR	3586005	03.06.2008	41	USPTO



25.	UNDER ARMOUR	40202100622 W	06.01.2021	10	SINGAPORE (IPOS)
26.	UNDER ARMOUR	3387	24.03.2011	18,25,28	PHILIPPINES (IPOPFL)
27.	UNDER ARMOUR	966392	27.09.2002	25	MEXICO (IMPI)
28.	UNDER ARMOUR	1141117	18.09.2009	18	MEXICO (IMPI)
29.	ARMOUR39	4426713	21.12.2012	09	USPTO
30.	UNDER ARMOUR	IDM0006361 56	05.08.2015	35	INDONESIA (DGIP)
31.	UNDER ARMOUR	061648	26.01.2009	18,25,28	SERBIA (IPOS)
32.	UNDER ARMOUR	797090	23.03.2017	25,18	CHILE (INAPI)

5. It is claimed that ARMOUR is an essential, dominant and distinguishing feature of plaintiff's trademarks / labels and has been granted registration outside India, in isolation and separate from registrations of "UNDER ARMOUR". Plaintiff also claims registrations in various "ARMOUR" formative marks such as "ARMOURBLOCK", "ARMOURVENT", "ARMOURBITE", "ARMOURFLEECE", etc.

6. Plaintiff's grievance is against defendant no.1 who is engaged in business of manufacture and sale of identical goods i.e. clothing and footwear using the

marks









(hereinafter referred to as “**impugned marks**”). Defendant no. 2 is the company where defendant no.1 is the Director, and has adopted the mark “AERO ARMOUR” as part of their trade name.

**Submissions on behalf of the plaintiff**

7. Counsel for the plaintiff therefore contends that not only the impugned marks are an exact replica of plaintiff’s marks and similar in terms of overall get-up, structure and representation, but also defendants’ marks are written in same manner, in same font, as further depicted under:

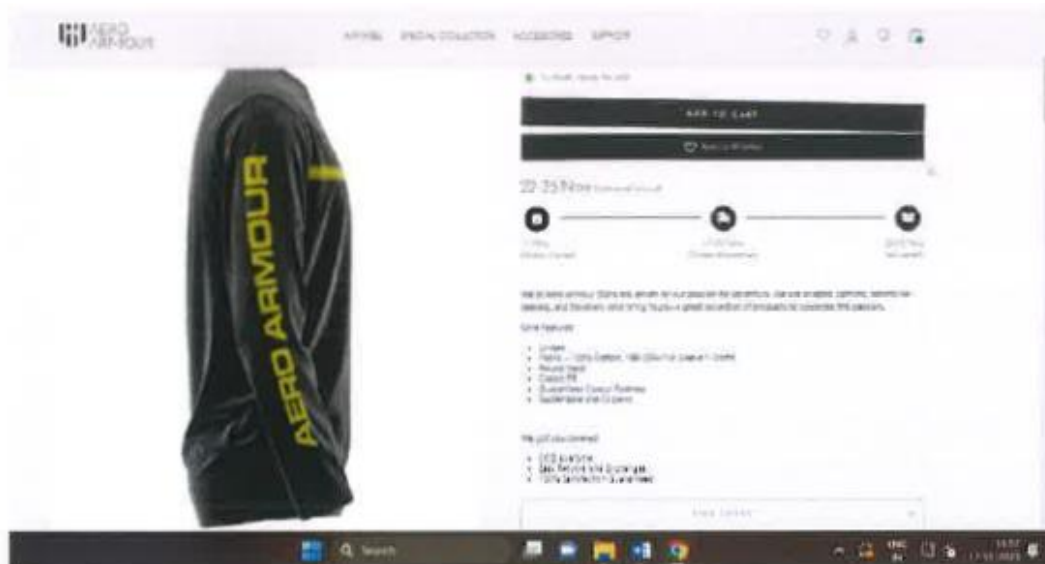
Plaintiff’s mark	Respondent’s mark
	

8. Plaintiff came to know about defendant no.1 in the month of October, 2022, when defendants’ applied for registration of the mark “AERO ARMOUR” under class 25, under application no. 5398267, which was subsequently opposed by the plaintiff. A counter statement was filed by defendant to the notice of opposition by plaintiff. In the said counter statement



defendant claimed the marks to be dissimilar. Defendants are also operating a domain name/website “[www.aeroarmour.store](http://www.aeroarmour.store)” on which their goods are available for sale. Some illustrative screenshots of defendants’ impugned goods are extracted as under:





9. Counsel for the plaintiff contends that it was a dishonest adoption by defendants which was evident from *inter alia* the following aspects:

9.1. *Firstly*, that the manner in which the marks have been used on some of the products was engineered to cause confusion amongst minds of consumers. Representative comparison of the same is extracted as under:



<u>COMPETING GOODS/PRODUCTS OF THE PLAINTIFF</u>	<u>COMPETING GOODS/PRODUCTS OF THE DEFENDANT</u>
	
	
	

9.2. *Secondly*, defendant also used a shortform “ARMR” as part of “AERO ARMR” which is evident from pictures above. This, it was contended, was a peculiar and significant aspect of use by plaintiff on its own product.

9.3. *Thirdly*, as depicted above, plaintiff’s font style was copied by the



defendants.

9.4. Plaintiff's counsel therefore submitted that - *firstly*, the mark "UNDER ARMOUR" has to be seen as a whole and defendants' impugned marks have to be compared for the purposes of deceptive similarity; *secondly* that the said marks were being used for identical goods i.e. apparels and therefore the likelihood of confusion was evident; *thirdly*, the possibility of association would arise considering the extremely distinct reputation of plaintiff's marks which includes the word "ARMOUR" and this aspect was covered under section 29 of the Act ; *fourthly*, the initial interest test for likelihood of confusion would be applicable as a customer with imperfect recollection, would be in a 'sense of wonderment' as to whether defendants' product are a part of plaintiff's portfolio; *fifthly*, considering that the pricing of defendants' products was much lesser than that of plaintiff's products (e.g. Rs. 799/- as opposed to Rs.2,000/- for a similar product) it amounted to dilution of plaintiff's brand; *sixthly*, the plaintiff had been diligent in opposing registrations of other "ARMOUR" based marks in India for which details have been provided, through oppositions, rectifications and injunction suits; *seventhly*, *Amritdhara* principles as enunciated by the Hon'ble Supreme Court in *Amritdhara Pharmacy v. Satya Deo Gupta*, AIR 1963 SC 449, would apply where the Hon'ble Supreme Court had stated that the overall impression is the critical factor and rejected the plea of the opposing party that plaintiff was attempting to monopolise "DHARA" ; *eighthly*, that the *anti-dissection rule* which is applied to composite marks is not antithetical to the *dominant mark rule* as was stated by Division Bench of this Court in *South India Beverages Pvt. Ltd. v. General Mills*



*Marketing*, 2014 SCC OnLine Del 1953; *ninthly*, the word “UNDER ARMOUR” is a coined word and was arbitrarily adopted with respect to a product and is therefore entitled to a high degree of protection; *tenthly*, balance of convenience was in favour of the plaintiff since plaintiff was a 2004 registrant, while defendant was January, 2022 adopted and applied under on ‘*proposed to be used*’ basis.

### **Submissions on behalf of the defendant**

10. Mr. Rajshekhar Rao, Senior Counsel for the defendant, refuted the submissions of plaintiff’s counsel *inter alia* on the following grounds:

10.1. Trademark registrations of plaintiff in India, basis which plaintiff rests its case, is of “UNDER ARMOUR” (*word and device*). There is no registration in India of the word “ARMOUR”, despite that plaintiff had applied for registration in other countries and has obtained registrations, as evident from the table above. Therefore, the plaintiff doesn’t have any dominance or proprietorship over the word “ARMOUR”.

10.2. To the application for registration by plaintiff in trademark “UNDER ARMOUR”, examination report was issued by Trademark Registry on 19<sup>th</sup> August, 2020 citing several marks of “ARMOUR”. In the reply filed by the plaintiff to examination report at para 3, it was submitted that cited marks were visually and structurally different from the plaintiff’s trademark “UNDER ARMOUR” when viewed as a whole. Reliance was also placed on *Cadila Health Care Limited v. Cadila Pharmaceuticals Limited*, (2001) 5 SC 243, decision of the Hon’ble Supreme Court stating that marks must be compared as



a whole. Thus, it was contended that the plaintiff had already taken a position that their mark had to be seen as a composite whole and therefore were estopped from canvassing a position contrary to the same. More importantly, the said reply to the examiner's report, was not placed on record by the plaintiff as part of their plaint and therefore amounts to gross suppression.

10.3. The goods of the defendant were essentially military inspired clothing and different from the sports and casual apparel which were being sold by the plaintiff under their brand. It was claimed that the mark was honestly adopted by defendant in the context that defendant No.1 was an aeronautical pilot who had started sole proprietorship in the year 2020 under the name "*The Accessories*" and had received a *UDYAM* registration certificate. Later, by the end of 2021, he realised that there was a huge market for apparel based on theme of aviation, army, defence forces, patriotism in India and therefore conceptualised the brand "AERO ARMOUR", after ascertaining that there was no other trader using the said trademark. The word "AERO" was chosen from the word *Aeronautics* to signify defendant's own background of being a qualified pilot, and the word "ARMOUR" was chosen for metal coverings historically worn in battle by soldiers, to connote the theme of defendant's products which were inspired by the armed forces. He further conceived a logo




that combines the element of shield, airplane and stripes indicative of military and aviation ranks, and was part of brand's core theme. Defendant no.2 was a company incorporated in year 2022 with defendant no.1



being one of directors of the said company.

10.4. Defendant no.1 had filed an application for registration of its trademark “AERO ARMOUR” under No.5398267 in class 25 on 6<sup>th</sup> April, 2022 on ‘*proposed to be used basis*’. This application is currently pending due to oppositions filed by the plaintiff herein, along with certain third parties.



10.5. The defendant has registered the device mark  , on a ‘*proposed to be used basis*’ under No. 5398244 in Class 25, as of the date 06<sup>th</sup> April, 2022.

10.6. Screenshots of nature of products which the defendants were supplying under their trademark are extracted as under:





**Aero Armour**  
19 July 2023 · 🌐

Aero Armour's kargil collection is live now!  
In frame: Courage knows no border text t-shirt.  
Check out our Kargil collection only at : [www.aeroarmour.store](http://www.aeroarmour.store)... See more



41

**Aero Armour**  
19 July 2023 · 🌐


Aero Armour's kargil collection is live now!  
In frame: Inas bullet t-shirt.  
Check out our Kargil collection only at : [www.aeroarmour.store](http://www.aeroarmour.store)... See more



21

**Aero Armour**  
17 July 2023 · 🌐

Aero Armour's kargil collection is live now!  
In frame: Mahar regiment and Mahar regiment motto t-shirt.  
Check out our Kargil collection only at : [www.aeroarmour.store](http://www.aeroarmour.store)... See more



25

**शिवराम ठाकुर**

Nice

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**Aero Armour**  
15 July 2023 · 🌐

A tribute to the major milestone, Chandrayaan 3 has achieved.  
Check out our Aerospace collection only at : [www.aeroarmour.store](http://www.aeroarmour.store)  
#aeroarmour #chandrayaan3 #aero #retrocoslum... See more



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**Aero Armour**  
14 July 2023 · 🌐

Aero Armour's kargil collection is live now!  
In frame: Sikh Regiment t-shirt.  
Check out our Kargil collection only at : [www.aeroarmour.store](http://www.aeroarmour.store)... See more



22

**Aero Armour**  
13 July 2023 · 🌐

Aero Armour's kargil collection is live now!  
In frame: Ghatak Commando t-shirt.  
Check out our Kargil collection only at : [www.aeroarmour.store](http://www.aeroarmour.store)... See more



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View more comments

by Bernard

**Aero Armour**  
13 July 2023 · 🌐

Aero Armour's kargil collection is live now!  
In frame: Pinaka MBR, t-shirt.  
Check out our Kargil collection only at : [www.aeroarmour.store](http://www.aeroarmour.store)... See more



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**Aero Armour**  
11 July 2023 · 🌐

Aero Armour's kargil collection is live now!  
In frame: Haas Badge t-shirt.  
Check out our Kargil collection only at : [www.aeroarmour.store](http://www.aeroarmour.store)... See more



25

**Aero Armour**  
10 July 2023 · 🌐

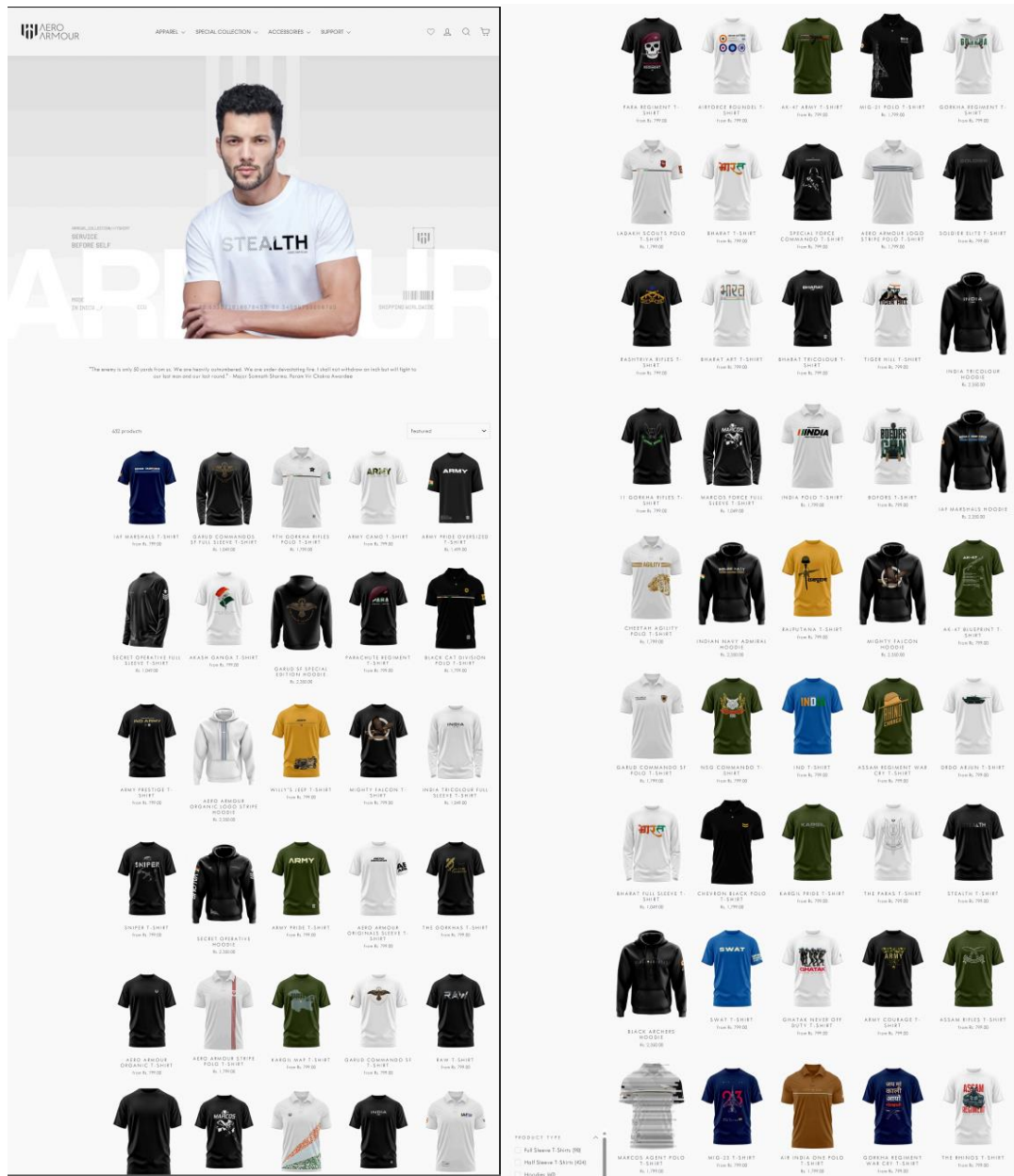
Aero Armour's kargil collection is live now!  
In frame: Kargil Spirit t-shirt.  
Check out our Kargil collection only at : [www.aeroarmour.store](http://www.aeroarmour.store)... See more



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10.7. Reference was also made to website of defendants, which showed the manner in which these kinds of products were offered, with particular emphasis on T-shirts indicating a specific regiment of Indian Army.





10.8. There was no reference to “UNDER ARMOUR” on the T-shirts and in fact, most of T-shirts even did not even have the brand “AERO ARMOUR” inscribed on top that could cause confusion. It was admitted that certain products may have had the tradename “AERO ARMOUR” on the top, but substantially many of these T-shirt products or apparels did not have the mark “AERO ARMOUR” on top even though it was being used as part of their trade name.

10.9. The defendants have tabulated a list of marks containing the word “ARMOUR”, which were before the Trademark Registry in class 25 to assert the point that “ARMOUR” was a common mark which had been registered in that same class 25 as a word or as a device by multiple brands and therefore, plaintiff cannot claim distinctiveness in the same mark. The said table is as under:



**LIST OF MARKS THAT HAVE BEEN FILED CONTAINING THE MARK 'ARMOUR' BEFORE THE TRADE MARKS REGISTRY IN INDIA IN CLASS 25**

APP NO	DATE OF APP	TRADE MARK	USER CLAIM ED	EXPI RE AT	COMPANY	GOODS IN CLASS 25	STATUS
378197	09-07-1981		01-05-1980	09-07-1988	DWARKA PRASAD SUREKA trading as BENGAL HOSIERY HOUSE	HOSIERY GOODS (U.W.BANNIAN & T.SHIRTS).	Expired
476217	03-08-1987	<b>ARMOUR</b>	Proposed to be used	03-08-2008	ARVIND DETERGENTS PRIVATE LIMITED	INDUSTRIAL SAFETY SHOES.	Expired
611514	10-11-1993	ARMOUR	01-05-1993	-	SHRI BHUPINDAR NATH SETIA	FOOTWEAR AND CLOTHING	Abandoned
843976	05-03-1999		05-02-1996	05-03-2009	SHAIKH MAJID trading as MARS CREATION	SHIRTS, JEANS & READYMADE GARMENTS INCLUDED IN CLASS 25.	Removed
935827	30-06-2000	ARMOUR	16-05-2000	30-06-2010	NAEEM AHMED trading as S-N-N GARMENTS	READYMADE & HOSIERY GOODS.	Removed
1074517	18-01-2002	ARMOUR	Proposed to be used	-	ARVIND BRANDS LIMITED	CLOTHINGS INCLUDING BOOTS SHOES AND SLIPPERS	Abandoned

2

1232893	05-09-2003	KNIGHTHOOD	05-09-2003	05-09-2033	FUTURE BRANDS LIMITED	CLOTHING, FOOTWEAR, HEADGEAR.	Registered
1366957	27-06-2005	ARMOURFIT	Proposed to be used	27-06-2015	CANTERBURY LIMITED	[CLASS : 25] ARTICLES OF CLOTHING, FOOTWEAR AND HEADGEAR.[CLASS : 28] EQUIPMENT FOR SPORTS AND GAMES INCLUDING PADDED CLOTHING FOR SPORTS AND GAMES, KNEE GUARDS AND SHIN GUARDS.[CLASS : 9] PROTECTIVE CLOTHING IN THIS CLASS INCLUDING CHEST PROTECTION, SHOULDER PADS, PROTECTIVE HEADGEAR AND HELMETS FOR SPORTS.	Expired
1441444	30-03-2006	ARMOURDILLO (LOGO)	30-03-2006	-	ARMOUR DILLO PTY LTD	CLOTHING, APPAREL, LEISUREWEAR, SPORTSWEAR, UNIFORMS, BABYWEAR, UNDERWEAR, UNDERPANTS, BOXER SHORTS, SINGLET, LEOTARDS, SHIRTS, SPORTS SHIRTS, BLOUSES, T-SHIRTS, TANK TOPS, SKIVVIES, RUGBY TOPS, GRANDPA TOPS, SHORTS, BOARD SHORTS, TRACKSUITS, WARM-UP SUITS, WETSUITS, T-SHIRTS MADE FROM SYNTHETIC FABRICS, RASH VESTS, PANTS, SWEAT PANTS, TROUSERS, JEANS, DRESSES, SKIRTS, CLOTHING BELTS, KNITWEAR, JUMPERS, SWEATERS, GUERNSEYS.	Withdrawn



						JERSEYS, CARDIGANS, VESTS, NECKWEAR, NECKTIES, SCARVES, JACKETS, BOMBER JACKETS, BLAZERS, FORMAL WEAR, SUITS, COATS, SWIMWEAR, BIKINIS, PARKAS ANORAKS, RAINWEAR, RAINCOATS, SLEEPWEAR, PYJAMAS, NIGHT SHIRTS, NIGHT GOWNS, APRONS, GLOVES, MITTENS, HEADWEAR, HATS, CAPS, BERETS, BEANIES, HOODS, VISORS, HEADBANDS, WRISTBANDS, SOCKS, STOCKINGS, HOSIERY, FOOTWEAR, SHOES, BOOTS, SANDALS, SLIPPERS AND THONGS	
15572 50	10-05-2007	ARMOUR (LABEL)	02-03- 2007	-	M. JAGATHEESAN trading as ARMOUR INDIA	CLOTHING, READYMADE GARMENTS, KNITTED WEARS AND TEXTILE GARMENTS, INCLUDED IN CLASS 25	Refused
16009 06	12-09-2007		12-11- 2001	12-09- 2027	PAVANKUMAR PARASKUMAR JAIN trading as M- S. PLANET CREATIONS	SHIRT, PANT, KIDS WEAR, GENTS WEAR, LADIES WEAR AND ALL KIND OF READYMADE GARMENTS BEING INCLUDED IN CLASS 25	Registere d
19451 49	05-04-2010		01-01- 1987	05-04- 2030	ARVIND FOOTWEAR PRIVATE LIMITED.	INDUSTRIAL SAFETY SHOES	Registere d
19855 90	28-06-2010		04-06- 2010	-	ISHWAR M. GAJAKOSH trading as V2 ENTERPRISES	MANUFACTURING AND TRADING OF CLOTHING, FOOTWEAR, HEADGEAR AND READYMADE GARMENTS.	Abandon ed

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21933 41	19-08-2011	ARMOUR	01-04- 2006	-	SANJEEV GUPTA trading as P.S. ENTERPRISES	Footweares including Shoes, Slippers, Rubber Chappals, Soles & Straps.	Refused
22335 64	14-11-2011		01-04- 1998	-	R. JAGDISH trading as SUPER GARMENTS	READYMADE GARMENTS, HOSIERY GOODS, T-SHIRTS, SHIRTS, LADIES AND CHILDREN WEARS, NIGHTIES, LADIES INNERWEARS, BELTS, FOOTWEAR, COATS, JACKETS AND GENTS AND LADIES WEAR.	Abandon ed
23991 35	19-09-2012	ULTIMATE ARMOUR	08-08- 2010	-	ULTIMATE TACTICAL AND COMBAT PVT. LTD	READYMADE GARMENTS, CLOTHING INCLUDING HOSIERY AND KNITTED CLOTHING; FOOTWEAR; ATHLETIC SHOES; HEADWEAR; INNERWEAR, GLOVES; HAND-WARMERS; SPORT BRAS, SOCKS, WRIST BANDS; CHILDREN WEARS INCLUDED IN CLASS 25	Refused
23991 36	19-09-2012		08-08- 2010	-	ULTIMATE TACTICAL AND COMBAT PVT. LTD	READYMADE GARMENTS, CLOTHING INCLUDING HOSIERY AND KNITTED CLOTHING; FOOTWEAR; ATHLETIC SHOES; HEADWEAR; INNERWEAR, GLOVES; HAND WARMER; SPORT BRAS, SOCKS, WRIST BANDS; CHILDREN WEARS INCLUDED IN CLASS 25	Abandon ed
26198 06	28-10-2013	TOMMY ARMOUR	23-02- 2010	28-10- 2023	TSA STORES, INC.	Golf apparel, namely, long and short sleeve t-shirts, sweaters, sweater vests, sweater jackets, turtlenecks, mock turtlenecks, fleece pullovers, polo shirts, shorts, slacks, jackets, vests, wind shirts, wind resistant jackets, waterproof jackets and pants, sweatshirts, sweat pants, skirts,	Registere d



						and socks; head gear, namely, hats, visors and caps; and golf shoes	
2732490	26-02-2014	FREE ARMOUR	Proposed to be used	-	BEIJING BONENG SPORTS CULTURE DEVELOPMENT CO., LTD	[CLASS : 25] Ready-made clothing; sports suits; clothing; underwear; scarves; children's clothes; shoes; waistbands; hats; socks.[CLASS : 28] Sports balls; arm guards for sports use; leg guards for sports use; wrist guards for sports use; elbow guards for sports use; knee pads; rackets; ball and racket covers; waist protectors for sports use; face guards for sports use.	Provisional Refusal Confirmed
2910340	25-02-2015		Proposed to be used	25-02-2025	AMOL CHARI trading as M-S. Chari Industries	Clothing (socks)	Rectification Filed
3217382	22-03-2016	RED ARMOUR	01-03-2016	-	BHAGWAN DASS	FOOTWEAR AND HOSIERY, READYMADE GARMENTS.	Abandoned
3335294	12-08-2016	INDIAN ARMOUR	01-08-2015	12-08-2026	SHRI. JAI BHAGWAN GUPTA trading as SHOPAHOLIC	CLOTHING AND FOOTWEAR.	Registered
3350622	30-08-2016		Proposed to be used	-	ASAD BASHA	Knitted Ready Made Garments and Hosiery Garments, Kids Wears, Ties, Jackets, Bermudas, Under Garments. Socks, Neck Wears, Head Wears, Gloves Clothing, footwear, headgear Woven And Hosiery And knitted Readymade Garments, Sportswear, T-Shirts, Track Suits, Capri, Sando, Shirts, Socks, Swimming Wears, Inner Garments	Abandoned

						Trousers, casual wear, vest banian, thermal wear, Knits, Jackets, Loungewear.	
3449579	04-01-2017		Proposed to be used	04-01-2027	MAYUR MALPANI	Ready-made clothing, Clothings	Registered
3469847	01-02-2017		01-07-2016	01-02-2027	QUIXOTIC OPTIONS PVT. LTD.	MANUFACTURING AND TRADING OF CLOTHING, FOOTWEAR, HEADGEAR	Registered
3489948	22-02-2017	ARMOUR	27-05-2015	22-02-2027	R. RAGUPATHI	CLOTHING.	Registered
3580179	28-06-2017	WOD ARMOUR	15-07-2015	-	ANKIT GROVER	CLOTHING, FOOTWEAR AND HEADGEAR	Opposed
3856501	11-06-2018		Proposed to be used	-	BRAND HOUSE	Clothing, footwear, headgear included in class 25	Refused
3936394	05-09-2018		Proposed to be used	05-09-2028	MANOJ THAKUR	Clothing; Shirts; Tee-shirts; Polo shirts; Jackets; Jeans; Casual clothing; Trousers; Coats; Dresses; Ready-made Clothing; Suits; Saris; Sarongs; Skirts; Bridal Wear; Women's Wear; Baby clothes; Articles of clothing for babies and toddlers; Footwear; Heels; Sandals; Shoes; Belts; Sports clothing; Sports Wear; Jerseys; Sports Jerseys; Pullovers; Uniforms; Blazers; Tracksuits; Sweat Shirts; Sweaters; boxer shorts; Gloves; Pyjamas; Socks; Suits; Sport Shoes.	Rectification Filed
3949847	19-09-2018		Proposed to be used	19-09-2028	DEEPAK GARG	Clothing, footwear, headgear.	Rectification Filed



39759 68	17-10-2018		Proposed to be used	17-10-2028	KUMARAGURUB ARAN SAKTHIVEL TRADING AS PRAVEEN INC	Vest, Briefs, Trunks, Underwears, Brassiers, Chemises, Slips, Petti Coats, Pannies, Nighties, Pyjamas, Tee-Shirts, Shirts, Shorts, Jeans, Pants, Trousers, Babies Tops, Babies Pants, Sportswear, Sweaters, Blazers, Uniforms, Leggings, Inner Soles, Nightwear, Shoes, Socks, Footwear, Tops For Women, Saree, Tops For men , Caps And Swimsuits.	Registered
40184 77	05-12-2018	BLUEARMOUR	Proposed to be used	05-12-2028	BALJEET SINGH RAJORA PROPRIETOR OF M-S SAMAY ENTERPRISES	Jeans,Denim jeans , Pants, Jeans Pant, Hosiery And Readymade Garments, Under Garments, Sleeping garments, Wearable garments, Casual Wears, Dresses, Uniforms, Clothing, Tops, T-Shirts, Shirts, Skirts, Polo Shirts, Sweatshirts, Sweaters, Pullovers, Blouses, Jackets, Raincoats, Overcoats, Topcoats, Trousers, Suits, Shawls, Frocks, Exercise Pants, Sweatpants, Shorts, Socks, Clothing Ties, Pajamas, Belts, Gloves, Footwear Namely, Shoes, Sneakers, Boots, Slippers, Hats & Caps	Rectification Filed
40723 64	30-01-2019	BEE ARMOUR	Proposed to be used	30-01-2029	COSMUS BAGS PRIVATE LIMITED	Printed T-shirts; Graphic T-shirts; Suit jackets; Cotton jackets; Leather jackets; Denim jackets; Jackets ; T-shirts.	Registered
40723 66	30-01-2019		Proposed to be used	30-01-2029	COSMUS BAGS PRIVATE LIMITED	Printed T-shirts; Graphic T-shirts; Suit jackets; Cotton jackets; Leather jackets; Denim jackets; Jackets ; T-shirts.	Registered
41088 99	06-03-2019		Proposed to be used	-	ALWARIS NAVT WALA	READY MADE GARMENTS , FOOTWEAR INCLUDED IN CLASS 25	Abandoned

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41376 87	04-04-2019		14-05-2014	-	DEEPAN CHOPRA	CLOTHING, FOOTWEAR, HEADWEAR.	Objected
41513 21	18-04-2019	THE ARMOUR WORLD	01-07-2017	-	SAUIB	Clothing included in class 25	Refused
42189 26	27-06-2019		Proposed to be used	27-06-2029	RAKESH MALLICK	Clothing, footwear, headwear.	Rectification Filed
43334 35	30-10-2019		Proposed to be used	-	ABDUL SALAM ABBAS	Clothing, footwear, headwear	Refused
43342 73	31-10-2019	ARMOUR	25-02-2015	31-10-2029	AMOL CHARI	Clothing (socks) as covered under Class 25	Registered
43342 74	31-10-2019		25-02-2015	31-10-2029	AMOL CHARI	Clothing (socks) as covered under Class 25	Registered
43677 79	05-12-2019		Proposed to be used	05-12-2029	M-S SGS SECURITE PVT. LTD.	Safety Shoes. Included In Class-25	Registered
43697 56	06-12-2019		Proposed to be used	-	MUSTHAF KAMALBASHA	Clothing, footwear, headwear	Abandoned
43779 04	14-12-2019	FIT ARMOUR	Proposed to be used	-	MOHAMMAD ABBASNAUSHA DALI PATEL AN INDIAN	IN RESPECT OF CLOTHING, FOOTWEAR, HEADWEAR INCLUDED IN CLASS - 25.	Refused



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					NATIONAL SOLE PROPRIETOR		
4427288	31-01-2020		Proposed to be used	-	HAMID SORATHIYA	Clothing, footwear, headwear as covered under class 25.	Opposed
4512261	28-05-2020	VIROARMOUR	Proposed to be used	-	SULOCHANA COTTON SPINNING MILLS PVT LTD	Coveralls, Clothing, Footwear, Headwear, Gloves, paper clothing, bibs, ear-foot muffs, aprons, dress shields.	Opposed
4514866	30-05-2020		Proposed to be used	-	M-S. SULOCHANA COTTON SPINNING MILLS PVT LTD	Coveralls, Clothing, Footwear, Headwear, Gloves, paper clothing, bibs, ear-foot muffs, clothing for operating rooms, orthopaedic footwear, aprons, dress shields.	Opposed
4521159	05-06-2020		05-08-2019	05-06-2030	SATTAVAN ENTERPRISE LLP	Clothing, Wearing Apparels and Readymade Garments.	Registered
4550322	30-06-2020		Proposed to be used	-	MOHD IRFAN	Readymade Garments and Clothing in Class 25	Refused
4566025	11-07-2020	ARMOUR	Proposed to be used	-	ARAHAN MAZDA	Athletic apparel, namely, Anti-sweat underclothing, Anti-sweat underwear, Athletic tights, Athletics vests, Baselayer bottoms, Baselayer tops, Boxer briefs, Boxer shorts, Briefs, Camouflage jackets, Camouflage pants, Camouflage vests, Capri pants, Cargo pants, Fleece jackets, Fleece pullovers, Fleece shorts, Fleece tops, Fleece vests, Gym shorts, Gym suits,	Opposed

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						Gymwear, Hooded pullovers, Hooded sweatshirts, Hooded tops, Hoodies, Jerseys, Jockstraps, Jogging bottoms, Jogging pants, Jogging suits, Jogging tops, Leggings, Moisture-wicking sports bras, Moisture-wicking sports pants, Moisture-wicking sports shirts, Polo knit top, Polo neck jumpers, Polo shirts, Printed t-shirts, Pullovers, Running Suits, Running vests, Short trousers, Shorts, Sports bras, Sports caps and hats, Sports headgear, Sportswear, Sweat-absorbent underclothing, Sweat jackets, Sweatpants, Sweat shirts, Sweat shorts, Sweat suits, Sweatbands, Tank-tops, Thermal clothing, Thermal headgear, Thermal underwear, Track jackets, Track pants, Tracksuit bottoms, Tracksuit tops, Tracksuits, Underwear, Underwear for women, Visors, Warm-up suits, Wrist bands, Yoga bottoms, Yoga pants, Yoga shirts, Yoga socks, Yoga tops.	
4674795	26-09-2020		Proposed to be used	26-09-2030	AKHILESH MADHAVAN	Clothing, casual jeans, pants, t-shirt, shirt, footwear, headgear as included in Class 25.	Registered
4750358	20-11-2020		Proposed to be used	-	TUSHAR MISHRA	Clothing, footwear and Headwear for human beings.	Opposed











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4751701	21-11-2020	KUNGARMOUR	01-10-2018	21-11-2030	KUNGARMOUR PRIVATE LIMITED	Clothing, footwear, headwear.	Rectification Filed
4762928	01-12-2020		Proposed to be used	01-12-2030	RAJAT RAJAN NAIK	CLOTHING, FOOTWEAR, HEADWEAR	Rectification Filed
4771336	07-12-2020		Proposed to be used	-	ZUFISHAN ALAM	FOOTWEAR	Accepted & Advertised
4932634	03-04-2021		Proposed to be used	-	N. HARSHAVARDHAN, SOLE PROPRIETOR OF M-S. INDIAN ARMOUR EXPORTS	Clothing, footwear, headgear	Opposed
4980215	21-05-2021		01-04-2021	21-05-2031	RANGOLI PAPER PRODUCTS PRIVATE LIMITED	One piece coveralls; One-piece coveralls; Coveralls.	Registered
4980216	21-05-2021	QURA ARMOUR	01-04-2021	-	RANGOLI PAPER PRODUCTS PRIVATE LIMITED	One piece coveralls; One-piece coveralls; Coveralls.	Accepted & Advertised

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4998703	09-06-2021		Proposed to be used	-	MD HAMZALLA SHAIKH PROPRIETOR OF MH INTERNATIONAL	Clothing, footwear, headwear	Objected
5073010	02-03-2021		Proposed to be used	-	SUNLIGHT SPORTS PTE. LTD.	[CLASS: 25] Clothing; footwear [CLASS: 28] Sports equipment.	Objected
5073113	04-08-2021		15-10-2017	-	MITHILESH KUMAR SINGH	Clothing, footwear, headwear.	Opposed
5292185	20-01-2022		Proposed to be used	-	MR. ALPESH AMBALAL PATEL	LADIES WEAR INCLUDING SHIRT, T-SHIRT, TROUSER, JEANS, PANT, KURTA, PYJAMA, MIDI, TOP, SKIRT, CAPRI, MEN WEAR INCLUDING SHIRT, T-SHIRT, TROUSER, JEANS, PANT, KURTA, PYJAMA, CLOTHING KIDS WEAR INCLUDING SHIRT, T-SHIRT, TROUSER, JEANS, PANT, KURTA, PYJAMA, MIDI, TOP, SKIRT, CAPRI, CLOTHING, ETHNIC WEAR, WESTERN WEAR, READYMADE GARMENTS	Objected
5324799	11-02-2022		Proposed to be used	-	MR ANIS ANSARI (PROPRIETOR) TRADING AS KLICK CORNER	Clothing	Objected
5364849	10-03-2022		Proposed to be used	-	ADNAN ABBAS TAWAWALA trading as FIT ARMOUR	FOOTWARE FOR LADIES GENTS AND CHILDRENS INCLUDED IN THIS CLASS	Objected



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53982 67	06-04-2022	Aero Armour	Proposed to be used	-	ANISH AGARWAL	CLOTHING AND FOOTWEAR	Opposed
54040 71	10-04-2022		Proposed to be used	-	DEEPA RAGHAVENDRA PATTAR	CLOTHING FOR MEN, WOMEN & CHILDREN; FORMAL WEAR; CASUAL WEAR; READY MADE CLOTHING; UNDE-CLOTHING; HOSIERY; SAREES; FINISHED TEXTILE LININGS FOR GARMENTS; FOOTWEAR; HEADWEAR; SUITS; JACKETS; SKIRTS; SPORTS CLOTHING; STOCKINGS; PYJAMAS; LINGERIE; GYM-GYMNASTIC WEARS; BABY CLOTHINGS;	Objected
54527 45	18-05-2022		01-08-2021	-	ARMOUR HEAVY TACTICAL GEAR PRIVATE LIMITED	Clothing, Wearing Apparels and Readymade Garments	Objected
54919 70	17-06-2022		Proposed to be used	-	SHRIMAGHAM SERVICE PRIVATE LIMITED	Clothing for men; Men's wear; Swimwear for men; Headgear for men; Formal wear for men; Leisure suits for men; Men's outer clothing; Fitted clothing for men; Men's shorts; Sweatpants for men; Pullovers for men; Jumpers for men; Body suits for men; Bottoms for men; Pyjamas for men; Men's tops; Men's pyjamas; Shirts for men; Men's jumpers; Men's trousers; Sleepwear for men; Suits for men; Sweaters for men; Trousers for men; Bathing suits for men; Clothing for men, women and children; Underwear for men;	Objected

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						Ladies' wear; Ladies' suits; Ladies' underwear; Ladies' clothing; Ladies' dresses; Belly bands for women; Women's athletic tops with built-in bras; Bathing suits for women; Women's sweatpants; Women's shorts; Women's jumpers; Women's pullovers; Women's pyjamas; Bottoms for women; Women's tops; Women's bodysuits; Shirts for women; Women's sleepwear; Sweaters for women; Women's trousers; Women's coats; Women's pants; Babies' tops; Babies' jumpers; Babies' pullovers; Babies' shorts; Babies' sweatpants; Babies' dresses; Babies' shirts; Babies' pyjamas; Babies' underwear; Babies' sleepwear; Babies' underclothing; Babies' pajamas; Babies' trousers; Babies' pants; Babies' sweaters; Babies' clothing; Babies' undergarments; Babies' outer clothing; Babies' headwear; Babies' footwear; Bodysuits for babies; Padded sleepsuits for babies; Babies' bibs, not of paper; Hats for infants, babies, toddlers and children; Articles of clothing for babies and toddlers;	
54960 68	20-06-2022		Proposed to be used	-	HEMA PRABHA JAIN	CLOTHING	Objected



5508286	28-06-2022		Proposed to be used	28-06-2032	KHAZANA CIRCULAR KNITTERS PRIVATE LIMITED	READY-MADE CLOTHING, MEN' CLOTHING, WOMEN' CLOTHING, CHILDREN' CLOTHING, SLEEPWEAR, SPORTS WEAR, SALWAR KURTA (READYMADE GARMENTS FOR WOMEN), GHAGRA CHOLI (READYMADE GARMENTS), LEHANGA (PETTICOAT), LEGGINGS, TOPS, PANTS, NIGHTWEAR.	Registered
5583260	25-08-2022		Proposed to be used	-	HARRY NAVEEN RAJ. E	APPARELS AND ACCESSORIES, GYM WEAR AND ACCESSORIES.	Objected
5630760	30-09-2022		Proposed to be used	-	GOVINDARAJ PRABAKAR PROPRIETOR OF M-S. KNIT FASHION	Clothing, Footwear, Headgear included in class 25.	Accepted & Advertised
5655904	20-10-2022		Proposed to be used	29-01-2019	JANSONS INDUSTRIES LIMITED	CLOTHING, FOOTWEAR, HEADGEAR.	Objected
5710779	06-12-2022		Proposed to be used	-	IMRAN RASHID SHAIKH	SHIRTS, T-SHIRTS, TRACK PANTS, HOODIES, SWEAT SHIRTS, SHOES, GYM WEAR, ACTIVE WEAR, CASUAL WEAR FORMAL WEAR NIGHT WEAR	Accepted & Advertised

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5728550	20-12-2022		Proposed to be used	-	JALEEL J	SHIRT	Objected
5742139	28-12-2022	FOOT ARMOUR	Proposed to be used	-	OMDUTT SHARMA	DEALS IN SOCKS	Accepted & Advertised
5766263	16-01-2023		Proposed to be used	-	N. HARSHAVARDHAN, SOLE PROPRIETOR, TRADING AS INDIAN ARMOUR EXPO	CLOTHING; FOOTWEAR; HEADGEAR; SHIRTS; TEE-SHIRTS; PANTS; TROUSERS; DRESSES; READY-MADE CLOTHING; SARIS; SARONGS; DHOTI (MENS WEAR); PYJAMAS; SKIRTS; LINGERIE; HOSIERY; UNDERCLOTHING; UNDERPANTS; UNDERWEAR; VESTS; BRASSIERES; PETTICOATS; SUITS; SWEATERS; JACKETS; OVERCOATS; KNITWEAR; NECKTIES; BELTS; CAPS; GLOVES; SCARFS; SHAWLS AND SOCKS; FACE MASKS	Opposed
5777935	24-01-2023	ARMOUR	Proposed to be used	-	SHOUNAK SHETE	CLOTHING OF ALL KINDS, ESPECIALLY SPORT AND LESIURE WEAR, SPORT AND LESIURE SHOES	Objected
6064571	12-08-2023	Armour planet	Proposed to be used	-	MOHAMMADALIS	Clothing *; Clothing for men, women and children; Clothing, footwear, headgear; Down garments; Foundation garments; Children's wear; Children's underwear; Women's wear; Women's dresses; Women's underwear; Ladies' dresses;	Objected



						Ladies' underwear; Men's wear; Men's underwear; Men's suits; Men's shorts; Shirts for men; Dresses for girls; Girls' dresses	
60966 62	04-09-2023	MedArmour	Proposed to be used	-	CHINAR FASHION PRIVATE LIMITED	Readymade Garments, Hosiery, Under Garments, Kids Wear, Sports Wear, Clothing Including Uniforms, Dresses, Jeans, Jackets, Shorts, Trackpants, Leggings, Shirts, T-Shirts, Trousers, Suits, Vests, Coats, Saree, Sherwanis, Kurta (Shirt); Salwar Kurta, Pajama (Trousers); Pajamas; Camisoles, Shawl, Turbans; Childrens Clothing, Crochet Dresses, Mens & Womens Clothing, Caps, Hats, Headwear, Neckwear, Socks, Tops, Lehenga, Chunni, Skirts, Night-Suits, Innerwear, Swimwear, Bra, Sport Bra, Panties; Bloomers, Tights; Brassieres; Blazers, Gloves, Ties, Woolen Garments, Footwears, Boots, Shoes And Slippers Included In Class 25.	Accepted & Advertised
61120 61	15-09-2023	wodamour	15-07-2015	-	ANKIT GROVER	clothing, footwear, headwear	Objected
62714 23	24-01-2024	ARMOUR SMITHS	Proposed to be used	-	RAKHI PROP. OF VIRAJ ENTERPRISES	includes mainly clothing, footwear and headwear for human beings.	Marked for Exam

10.10. Attention was drawn to a registration provided for one of the marks “ARMOUR Casual Wear” where registration was given on the basis of a disclaimer that “*this trademark shall give no right to the exclusive use of the word ARMOUR except as substantially shown in the label*”. It was thus contended that the Registrar wanted to maintain purity of the Register and therefore had provided the said disclaimer in that no party could claim proprietorship of word “ARMOUR” exclusively. The said mark is extracted as under:





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**ARMOUR****RSG** where

10.11. The same was case with the device mark **ARMOUR RSG** where disclaimer was provided as “*the mark as a label should be used in whole as a composite mark and there is no exclusive right over the descriptive words in the logo*”.

10.12. The defendants had established huge reputation and goodwill in their products since the theme was based on patriotism and love for India. The tagline the brand is “*WEAR YOUR VALOUR*” and “*WEAR YOUR PRIDE*” thereby celebrating the idea of heroism and bravery. The website <https://www.aeroarmour.store> was launched as also promotional campaign on social media pages. Defendants’ products were available on various online shopping site such as Amazon India and Myntra. Due to this niche category of products, affordable pricing, high quality, defendants’ claim that their brand achieved wide reputation and has served more than 1,50,000 customers across India. It was the first fashion brand to create a collection inspired *inter alia* from Kargil War, the Operation Bright Star of the Indian Air Force. Defendants have supplied products to TATA Aerospace and Defence for the C-295 program, where TATA is manufacturing aircrafts in collaboration with the Indian Air Force. Defendants have been participating in multiple events such as Aero India, Chennai Defence Expo, Indian Kargil Marathon Honour Run and Dubai Air Show. They have also supplied products to the Aviation Cell of IIT, Kharagpur and to the Indian Institute of Management. They claim to be official



fashion partners of the Hollywood movie ‘*Devotion*’ in India and have been awarded the “*Emerging Brands Award*” by Shiprocket.

10.13. As regards the plaintiff contention that defendants were using “ARMR”, in order to infuse confusion in the market and associate with plaintiff’s products, it is submitted in the reply that the word “ARMOUR” had been reduced to “ARMR” in few designs to match the letter count with “AERO”, to give a better symmetry and notwithstanding, the plaintiff did not have right over “ARMR”, it would not cause any confusion.

10.14. As regards plaintiff’s contention that they were using the mark on the sleeves in a similar manner as that of plaintiff’s product, it is submitted that similar brand placements by various parties is a common industry practice and not unique to any particular brand. Some examples were presented as an illustration, as under:



10.15. It was claimed that plaintiff’s and defendants’ products were based on different categories which is discernible from the images on their websites.



While plaintiff's products were relatable to various categories of sports such as running, golf, basketball; defendants' products were relatable to categories of aviation, nautical, travel.

Plaintiff's products	Defendants' products
	

10.16. There is huge difference in pricing of the products in that plaintiff's products are priced around Rs. 2,000/- while average price point of defendants' product is around Rs.799/- per T-shirt. This significantly different pricing reflects different positions of brands in different segments of market, which would not confuse an average consumer with average intelligence and imperfect recollection.

10.17. Balance of convenience is clearly in favour of defendants since while plaintiff came to know about impugned mark in October 2022, as per their own



averments, suit was filed in November 2023 and as per principles of *Wander Ltd. v. Antox India (P) Ltd.*, 1990 Supp SCC 727, injunction ought not to follow.

10.18. It is further stated that even as regards copyright, artistic works in both the marks were totally different, as is evident from a comparison of device marks itself.

10.19. Reliance was also placed on certain additional documents which were filed on 5<sup>th</sup> March, 2024, including WhatsApp chats between the defendant's promoters and that of their designers. The chat shows that brand "AERO ARMOUR" was suggested since it was an armour for flight gear and included within it both aviation and armour category which was 80-85% of their business.

10.20. Decision of this Court in *Under Armour v. Aditya Birla Fashion* dated 20<sup>th</sup> April, 2023, 2023 : DHC : 2711 in which this Court had enjoined defendant's mark "STREET ARMOUR", was distinguished by the senior counsel, particularly relying on para 6.6.

10.21. Reliance was placed on section 17 of the Trademarks Act to assert that exclusive right to the proprietor of a trademark is for use of trademark as a whole and does not confer any right in part of the said trademark.

10.22. In support of his arguments, senior counsel for defendant relied upon *inter alia* the following decisions:

- a) *Registrar of Trademarks v. Ashok Chandra Rakhit*, (1955) SCC OnLine SC 12, in particular to para 8, for the exaggerated claims





made by proprietors of trademarks, in spite of the fact that parts of their trademarks have been disclaimed;

- b) *M/S Gufic Ltd. & Anr. v. Clinique Laboratories LLC & Anr.*, (2010) SCC OnLine Del 2322, in particular on para 24, to point out that price differential between products being vast, no consumer would confuse one for the other;
- c) *PP Jewellers Pvt. Ltd. v. PP Buildwell Pvt. Ltd.*, (2010) SCC OnLine Del 932, in particular para 23, relying on *Kerly's Law of Trademarks*, in that if some parts of mark were common, the people who would know the distinguishing characteristics of the marks, would at all be deceived or not;
- d) *Kirorimal Kashiram Marketing v. Shree Sita Chawal Udyog Mill*, (2010) SCC OnLine Del 2933, on arbitrary adoption of marks;
- e) *Vardhman Buidltech Pvt. Ltd. v. Vardhman Proprieties*, (2016) SCC OnLine Del 4738, in particular para 8, in that the word Vardhman was itself of non-distinctive character and common to trade and therefore no exclusive right arose in favour of plaintiffs;
- f) *Soothe Healthcare Pvt. Ltd. v. Dabur India Ltd.*, (2022) SCC OnLine Del 2006, in that the word 'Super' was widely used for various products and no claim can be made in that regard;
- g) *Hamdard National Foundation v. Sadar Laboratories*, (2022) SCC OnLine Del 4523, in particular para 42, where the Court stated that



principle of arbitrary adoption, as in *Kirorimal Kashiram* (*supra*), was worded in right terms and has to be read restrictively and in conformity with the *anti-dissection rule*;

- h) *Vasundhra Jewellers Pvt. Ltd. v. Kirat Vinod Bhai Jagwani & Anr.*, (2022) SCC OnLine Del 3370, in particular para 40, for reliance made on prosecution history of the plaintiff;
- i) *Prasar Bharti v. Dish T.V. (India)*, (2024) SCC OnLine Del 1694, where the commonly used part of the marks ‘Dish’ was separated out from the distinguishing part of the whole mark;
- j) *Premier SPG & WVG Mills Pvt. Ltd. v. Football Association Premier League Ltd.*, (2024) SCC OnLine Del 358, where Premier being part of competing marks was not to stand in the way of registration of a mark which have Premier only as part of it;
- k) *Pidlite Industries Ltd. v. Sanjay Jain & Anr.*, 2024:DHC:2369, where the word ‘KWIK’ was held has part of the mark over the petitioner would not have an exclusive right thereof.

### Submissions in Rejoinder

11. Counsel for the plaintiff responded to the submissions by senior counsel for defendants, and submitted as under:

11.1. Plaintiff had been alert in opposing the marks which were deceptively similar to plaintiff’s marks and included the word “ARMOUR” in India. A list



of such actions was adverted to and tabulated by plaintiff, as under:

**List of Action initiated by the Plaintiff in India to protect their trademark from being infringed**

S. No.	Third Party mark	Application No.	Class	Action taken by Plaintiff
1.	AU	5372621	25	Suit filed in the Patiala House District Court C&D Notice Cancellation Petition filed in the Delhi High Court
2.	UA Women	4887985	25	Litigation - Delhi High Court; Opposition - Rule 45 Filed; Contempt and Court Commissioner Matter settled in the court
3.	Armorado	5130092	25	Opposed by Plaintiff.
4.	Shock Armor	4061150	9	Opposed by Plaintiff.
5.	Viro Armor Logo	4514866	25	Opposed by Plaintiff.
6.	Harda UA like Logo	5192758	25	Opposed by Plaintiff.
7.	UA Mumbai			Cease and Desist Legal Notice sent by Plaintiff, Mark changed by the rival party.
8.	UA Fashion	4860912	25	Objections filed by the Plaintiff.
9.	Viro Armor	4512261	25	Opposed, Legal Notice (Rule 45 filed by us October 10, 2022. Rule 47 filed by us on December 21, 2022) All stages complete
10.	Univ Six Apparal UA design	5425465	25	C&D notice served on 30.08.2022 (NOP FILED)
11.	Armour	2910340	25	Cancellation Petition filed by the Plaintiff.
12.	Active Armour	3936394	25	Cancellation Petition filed by the Plaintiff.
13.	AA Athlete Armour	3949847	25	Cancellation Petition filed by the Plaintiff.
14.	Blue armour	4018477	25	Cancellation Petition filed by the Plaintiff.
15.	Swiss Armour	4218926	25	Cancellation Petition filed by the Plaintiff.
16.	Kung armour	4751701	25	Cancellation Petition filed by the Plaintiff.
17.	Youth Armour	4762928	25	Cancellation Petition
18.	King Armour	4427288	25	Opposed by the Plaintiff.
19.	Prime Armour	5073010	25, 28	Pre-publication Objection filed by the Plaintiff.
20.	Shock Armour- Word Mark	5465463	25	Opposed by the Plaintiff.



21.	Armour- Word Mark	4566025	25	Opposed by the Plaintiff.
22.	URBAN ARTIST WITH DEVICE OF U.A.	5500158	25	Opposed by the Plaintiff.
23.	Armour- Device Mark	5073113	25	Opposed by the Plaintiff.
24.	Shock Armour- Device Mark	4061151	25	Rectification Petition filed by the Plaintiff.

11.2. These actions were prior to filing the suits. In situations where trademarks had already been registered, defendants filed legal proceedings, as evident from the decision by a Coordinate Bench of this Court in *Aditya Birla Fashion (supra)*.

11.3. The issue which plaintiff was canvassing was of overall comparison of composite mark of plaintiff as well as defendants i.e. “UNDER ARMOUR” v. “AERO ARMOUR”, and the issue of “ARMOUR” being a common to the trade or being registered by the persons would not be relevant. In this regard reliance was placed on *South India Beverages (supra)* which held that *anti-dissection rule* is not inconsistent with *dominant mark rule*. The dominant part of the mark was “ARMOUR” since there was a full “ARMOUR” family of marks including “ARMOURVENT”, “ARMOURFLEECE”, “ARMOURBITE”, “ARMOURBLOCK” etc.

11.4. Reliance was placed on *Amritdhara* principles, which were under Section 10 the Trademarks Act, 1940, which is now succeeded by section 29 of the Act and includes the element of association with the earlier mark, to contend that an overall impression was important.

11.5. As regards any allegations of delay by plaintiff in pursuing their right to the mark, it was stated that mark was applied by the defendant only on 06<sup>th</sup> April



2022, was opposed on 25<sup>nd</sup> October 2022 by the plaintiff. The expansion of business by defendant, pursuant to that was at their own peril. Reliance was placed on the decision in *Aditya Birla (supra)*.

11.6. As regards estoppel that plaintiff has taken a position on the composite mark in reply to examination, reliance was placed on decision of this Court in *AO Smith Corporation & Anr. V. Star Smith Export Pvt. Ltd. & Anr.*, 2024: DHC: 2366, to state that estoppel operates only *inter se* between the parties.

11.7. As regards price difference between the products, this nature of plea of defendants had been rejected in *South India Beverages (supra)* and in any event it leads to dilution of plaintiff's trademark.

11.8. Reliance was placed on initial interest confusion test as enunciated in *Google LLC v. DRS Logistics (P) Ltd.*, 2023 SCC OnLine Del 4809, since the goods were identical that too of casual apparel.

11.9. Regards actions against other ARMOUR brands, it was stated that they had been diligent in pursuing the business which were expanding, and when it started to impact their businesses. There was no obligation on them to pursue marks simply because they were on the Trademark Register. ARMOUR use has become distinctive with plaintiff's brand. In fact, they had filed rectifications as well including against "ARMOUR Heavy".

11.10. The decision in *Vasundhra (supra)* was distinguished on the ground that Vasundhra was generic whereas in this case, ARMOUR is not generic but is a coined word and has assumed distinctiveness in favour of the plaintiff.



Moreover, the plea of the defendants that ARMOUR is not distinctive, is belied from the fact that they themselves have applied for registration of mark AERO ARMOUR and they are estopped from contending the same.

11.11. In support of their arguments the plaintiff relied upon *inter alia* the following decisions:

- a) ***Pankaj Goel v. Dabur India Pvt Ltd.***, 2008 SCC OnLine Del 1744, on the aspect of dishonest adoption of a similar mark;
- b) ***Laxmikant v. Patel v. Chetan Bhai Shah***, (2002) 3 SC 65, in that confusion was the real test and innocent adoption, even if considered, would not be defence;
- c) ***South India Beverages (supra)***, on the issue of price difference and consistency of *rule of anti-dissection* and *rule of dominant mark*;
- d) ***Raman Kwatra v. KEI Industries***, 2023:DHC:0083, on the issue that estoppel operates *inter se* parties and not otherwise;
- e) ***Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceuticals Laboratories***, 1964 SCC OnLine SC 14, on essential features of a mark being adopted;
- f) ***Midas Hygiene Industries v. Sudhir Bhatia***, (2004) 3 SCC 19, on issue of delay cannot preclude plaintiff from asserting their rights;
- g) ***Hindustan Pencils Private Limited v. India Stationery Products Company***, AIR 1990 Del 19, on the issue of dishonest adoption.



- h) *Swiss Bike Vertriebs Gmbh Subsidiary of Accell Group v. Reliance Brands Limited (RBL)*, 2024:DHC:1884, where phonetic similarity in a trademark was injuncted.
- i) *AO Smith (supra)* where there were two similar marks were compared and defendant's mark was injuncted.

### Analysis

#### **12. Assessment of Confusion in Trademarks**

Through the years, courts have formulated and propounded various tests for a comparative assessment of trademarks in infringement/passing off cases, to somehow rationalize the inherent subjectivity in this assessment. Some of these tests have been a result of pure judicial innovation, and some have nuanced an already existing formulation. Though it would be impossible to give an exhaustive list of these tests which are scattered all over trademark jurisprudence, an attempt is being made under to provide an illustrative list of such tests, with their sources, and then to categorize the core elements of assessment into recognizable factors.

#### **13. Illustrative list of tests for assessment of trademark confusion**

- The "*Pianotist Test*" articulated by Parker J. in *Pianotist Co. Ltd.'s application*, 23 RPC 774 at 777, was cited with approval by the Hon'ble Supreme Court in *Amritdhara Pharmacy v. Satya Deo Gupta*, 1962 SCC OnLine SC 13;
- The consumer test of "*man of average intelligence with imperfect*



**recollection**” was articulated by the Hon’ble Supreme Court in *Corn Products Refining Co. v. Shangrila Food Products Ltd.*, 1959 SCC OnLine SC 11;

- In *K.R. Chinna Krishna Chettiar v. Shri Ambal & Co.*, (1969) 2 SCC 131, the Hon’ble Supreme Court propounded in favour of **phonetic similarity**;
- The Supreme Court laid down the **“added matter test”** in *Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories*, AIR 1965 SC 980;
- This Court clarified the interplay between **“dominant mark rule”** and **“anti-dissection”** rule in *South India Beverages Pvt. Ltd. v. General Mills Marketing*, 2014 SCC OnLine Del 1953;
- The test of **“initial interest confusion”** was referred to by this court in *Baker Hughes Ltd. v. Hiroo Khushalani*, 1998 SCC OnLine Del 481;
- This Court in *Shree Nath Heritage Liquor Pvt. Ltd. v. Allied Blender & Distillers Pvt. Ltd.*, 2015 SCC OnLine Del 10164, cited with approval the **“Sleekcraft Factors”**, the **“Polaroid Factors”** and the **“DuPont Factors”**, which form part of American trademark jurisprudence;
- In the case of *S. Syed Mohideen v. P. Sulochana Bai*, (2016) 2 SCC 683, the Hon’ble Supreme Court held that a **prior user** has a superior right over a registered owner;
- The Supreme Court laid down the **“Cadila Principles”** for determining





likelihood of confusion in passing off cases, in *Cadila Healthcare Ltd.* (*supra*);

- This Court in *Pankaj Goel v. Dabur India Ltd.*, 2008 SCC OnLine Del 1744, held that onus remains on the defendant to show significant business turnover, of other marks on the Register;
- This Court in *AMPM Fashions (P) Ltd. v. Akash Anil Mehta*, 2021 SCC OnLine Del 4945, highlighted the relevance of an inter-dependent and holistic approach to balancing various considerations between marks and consequently laid down the “**Global Appreciation Test**”;
- The Hon’ble Supreme Court in *Midas Hygiene Industries (P) Ltd. v. Sudhir Bhatia*, (2004) 3 SCC 90, held that mere delay in bringing an action is not sufficient to defeat grant of injunction;
- This Court in *Vardhman Buildtech Pvt. Ltd. v. Vardhman Properties Ltd.*, 2016 SCC OnLine Del 4738, in relation to **part of a mark**, held that registration does not confer any exclusive right;
- The Hon’ble Supreme Court in *Registrar of Trade Marks v. Ashok Chandra Rakhit Ltd.*, 1955 SCC OnLine SC 12, held that registration of the mark may not grant any statutory right or **monopoly** with respect to that part;
- This Court in *Kirorimal Kashiram Marketing & Agencies Pvt. Ltd. v. Sita Chawal Udyog Mill*, 2010 SCC OnLine Del 2933, held that **arbitrary adoption** of a word mark with respect to a product with which it has no



correlation is entitled to a very high degree of protection;

- This Court in *Automatic Electric Ltd. v. R.K. Dhawan & Anr.*, 1999 SCC OnLine Del, held that a party was **estopped** from claiming lack of distinctiveness, if itself had sought a proprietary claim and monopoly over the expression;
- This Court in *P.P. Jewellers (P) Ltd. v. P.P. Buildwell (P) Ltd.*, 2010 SCC OnLine Del 932, articulated the importance of **distinguishing factors**, where some parts of two marks are the same;
- In the decision of *Hindustan Pencils Pvt Ltd. v. India Stationery Products Co.*, 1989 SCC OnLine Del 34, this Court focussing on **dishonest adoption**, stated that an infringer adopting someone else's mark must be aware of the consequences that would follow;
- In the judgment of *Neon Laboratories Ltd. v. Medical Technologies Ltd.*, (2016) 2 SCC 672, the Hon'ble Supreme Court coined the term "**first in the market**" test;
- This Court in *Schering Corp. v. Alkem Laboratories Ltd.*, 2008 SCC OnLine Del 760, provided that when the **price difference** of the products is of a high magnitude, the likelihood of deception would also be greatly reduced;
- In the decision of *Nandhini Deluxe v. Karnataka Coop. Milk Producers Federation Ltd.*, (2018) 9 SCC 183, the Hon'ble Supreme Court held that the proprietor of a trademark cannot enjoy **monopoly over an entire class**



of goods, if not using the said trademark in respect of certain goods (*being different products*) falling under the same class;

#### **14. Factors for assessment of trade mark confusion – The Guideposts**

These and various other tests and factors have been propounded from time to time by various courts. Rather than trundling through these innumerable parameters, factors and nuances scattered all over the jurisprudence, this Court has attempted to categorize them into intelligible, thematic silos. Each category strings together and collates factors, any or all of which may be needed for assessment of trademark confusion. Needless to state these factors are not exhaustive, but may serve as useful *guideposts* when embarking on a journey of trade mark assessment. These categories and factors are as under

##### **A. Strength of the marks**

- A.1 *Registration and user details*
- A.2 *History of enforcement*
- A.3 *Evidence of use*
- A.4 *Sales and advertising*
- A.5 *Portfolio of goods where mark is used*
- A.6 *Disclaimers in registrations*
- A.7 *Well-known marks*
- A.8 *Other similar/identical marks in use/ registered/common to trade*

##### **B. Similarity between marks**

- B.1 *As to word and/or device*



*B.2 As to appearance, layout, get-up, trade dress*

*B.3 As to representation in commerce*

*B.4 As to phonetic similarity*

*B.5 As to overall impression*

*B.6 As to connotation*

*B.7 Extent of similarity/dissimilarity*

*B.9 Anti-dissection rule*

*B.9 Dominant mark rule*

*B.10 Part of mark*

**C. Proximity of goods and services**

*C.1 Identical/ similar goods and services*

*C.2 Allied/cognate goods and services*

*C.3 Category of goods/services, registration classes*

*C.4 Specialized goods/services e.g. pharmaceutical products*

*C.5 Price point of goods/services*

*C.6 Uniqueness of goods/services*

*C.7 Quality of goods/services*

**D. Confusion**

*D.1 Nature of confusion*

*D.2 Point of sale confusion*

*D.3 Post purchase confusion*

*D.4 Initial interest confusion*

*D.5 Extent of confusion - substantial or de minimis*



*D.6 Duration of confusion - concurrent use*

*D.7 Evidence of confusion*

**E. Consumer**

*E.1 Socio/Economic category*

*E.2 Sophistication of consumer*

*E.3 Knowledge, awareness, access to information*

*E.4 Market presence of goods/services*

*E.5 Trade channels*

*E.6 Likelihood of expansion of the business*

**F. Intent**

*F.1 Defendant's good/bad faith*

*F.2 Dishonest adoption*

*F.3 Prior association with plaintiff*

*F.4 Prior knowledge of plaintiff's marks*

*F.5 Monopolizing intent of plaintiff*

*F.6 Arbitrary adoption of marks/origin of the mark*

*F.7 Close competitors*

*F.8 Publici juris*

**G. Conduct**

*G.1 Delay*

*G.2 Estoppel*

*G.3 TM oppositions*



15. Having heard submissions of counsel for parties, perused the pleadings and documents on record, this Court is of the opinion that plaintiff is not entitled to injunction in terms of what it seeks, *inter alia* for the following reasons:

15.1. There were some deliberations on whether the dominant part of plaintiff's marks was "ARMOUR". Counsel for plaintiff in his initial submissions had focussed on this aspect and pointed out to the registrations of "ARMOUR" in their favour in other jurisdictions of the world, though not registered in India. It was emphasized that "ARMOUR" had been registered since it was an essential, dominant and distinguishing feature of plaintiff's trademark "UNDER ARMOUR" and therefore granted registrations outside India. Plaintiff also claimed ownership of various formative marks with the word 'ARMOUR' such as "ARMOURBLOCK", "ARMOURVENT", "ARMOURBITE", "ARMOURFLEECE", etc.

15.2. This assertion, however, leads to some difficulty for the plaintiff, since plaintiff never chose to register "ARMOUR" in India, despite having applied for and having obtained registrations in other countries. Plaintiff's application for registration of "UNDER ARMOUR" was faced with an examination report citing several marks containing "ARMOUR". In its reply to the examination report, plaintiff stated that the cited marks were visually and structurally different when compared to plaintiff's trademark "UNDER ARMOUR" being viewed *as a whole*. Having taking this position and not registered "ARMOUR", the plaintiff cannot claim proprietorship of part of the mark.

15.3. This aspect has been dealt with by a decision of this Court in *Vardhman*



***Buildtech Pvt. Ltd. v. Vardhman Properties Ltd.***, 2016 SCC OnLine Del 4738, where this Court has held that registration itself does not grant exclusive right in a part of the mark. Relevant extracts of the said judgment are as under for ease of reference:

*“8. On a plain reading of Section 15(1), it is evident that where a proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he is permitted to apply to register the whole and the part as separate trade marks. In the present case, the respondent is the proprietor of the label/mark which includes the words ‘VARDHMAN PLAZAS’. The respondent is claiming exclusivity in respect of the word ‘VARDHMAN’. It is clear that he had the option to make an application for registering the word ‘VARDHMAN’ as a separate trade mark. Assuming that he could have had the word mark registered, it is an admitted fact that the respondent made no such application. Section 17 of the said Act makes it clear when a trade mark consists of several matters, as it does in the present case, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken as a whole. There is no dispute that the label/mark, taken as a whole, is the exclusive property of the respondent. The learned counsel for the appellants has no quarrel with this at all. The issue arises when the respondent claims exclusive right to a part of the label/mark and particularly to the word ‘VARDHMAN’. Section 17(2) is a non-obstante provision [vis-à-vis sub-section(1)], which stipulates that when a trade mark contains any part which is not the subject matter of a separate application by the proprietor for registration as a trade mark or which is not separately registered by the proprietor as a trade mark or contains any matter which is common to the trade or is otherwise of a non-distinctive character, the registration thereof shall not confer any exclusive right in the matter forming only a*



part of the whole of the trade mark so registered. In the present case, neither has the respondent separately registered 'VARDHMAN' as a trade mark nor has any such application been made. Furthermore, the word 'VARDHMAN' is itself of a non-distinctive character and is not only common to this trade but to several other businesses. Consequently, the registration of the label/mark which contains the words 'VARDHMAN PLAZAS' does not confer any exclusive right on the respondent insofar as a part of that mark, namely, 'VARDHMAN' is concerned.

9. We now come to Section 28 of the said Act which deals with the rights conferred by registration. It is clear that by virtue of Section 28, the registration of a trade mark, if valid, gives to the registered proprietor of the trade mark the exclusive right to the use of the mark in relation to the goods or services in respect of which the trade mark is registered and, importantly, to obtain relief in respect of infringement of the trade mark in the manner provided by the Act. What is important to notice is that Section 28(1) begins with the words 'subject to the other provisions of this Act'. In other words, Section 28 would have to be read as subject to Section 17 of the said Act. Consequently, in our opinion the registration of the label/mark in favour of the respondent, which includes the words 'VARDHMAN PLAZAS', does not confer an exclusive right on the respondent insofar as part of the mark, which has reference to the word 'VARDHMAN', is concerned.

10. The learned counsel for the respondent, as pointed out above, sought to take the benefit of Section 29(9) of the said Act. That provision stipulates that where 'distinctive elements' of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation and the reference in Section 29 to the use of a mark is to be





*construed accordingly. First of all, the stress in the said provision is on the words 'distinctive elements'. Neither is 'VARDHMAN' nor the word 'PLAZAS' a distinctive element of the trade mark. The word 'VARDHMAN' has not been registered as a trade mark nor could it be because it is commonly used and, as pointed out above, is the name of Lord Mahavir. Secondly, the word 'PLAZAS' is also commonly used and cannot be appropriated by the respondent. Therefore, the distinctive elements are neither the word 'VARDHMAN' nor the word 'PLAZAS'. But, the two words taken together - 'VARDHMAN PLAZAS' - is a distinctive element of the label/mark. Thus, if the appellants were to use words 'VARDHMAN' and 'PLAZAS' in conjunction, then the respondent may have had a right to restrain them from using the same. We are, therefore, of the view that Section 29(9) of the said Act also does not come in aid of the respondent.*

(emphasis added)

15.4. Notably, during submissions in rejoinder counsel for plaintiff stressed that it was actually the overall comparison of the composite mark “UNDER ARMOUR” that they were pressing in their challenge to defendant’s mark “AERO ARMOUR”, and that “ARMOUR” being common to trade would therefore not be relevant, even though the ‘*anti-dissection-rule*’ is not consistent with the ‘*dominant mark rule*’ as per *South India Beverages* (*supra*). The overall reliance of the plaintiff on the decision of this Court in CS (COMM) 41/2023 dated 20<sup>th</sup> April 2023, in *Aditya Birla Fashion* (*supra*) also does not come to its aid, on this issue. Even though the decision in that matter was in their favour, the Single Judge quite clearly analysed plaintiff’s *plea* for treating “ARMOUR” as dominant part of their mark and rejected it. In this regard the following paragraphs from that decision, extracted hereinbelow, may be



relevant:

*“4.5.3 This principle would apply, however, where, of the various parts of a mark, a Court could identify one or the other as dominant. I see no reason to regard ARMOUR/ARMOR, either in UNDER ARMOUR or in STREET ARMOR, as the dominant part of the mark. The principal test to determine whether any one part of a mark is dominant is, unquestionably, the test of whether, when the mark is seen by a customer of average intelligence and imperfect recollection, any one part of the mark would impress itself more strongly on his psyche than the others. Viewed empirically and as a mark per se, and in the absence of any material or evidence to indicate to the contrary, I am unable to convince myself that UNDER, or STREET, is any less dominant, in UNDER ARMOUR or STREET ARMOR, than ARMOUR or ARMOR, respectively. The plea of the plaintiff that ARMOUR constitutes the dominant part of the plaintiff’s UNDERARMOUR mark, therefore, does not prima facie commend itself to acceptance.”*

(emphasis added)

15.5. Therefore, this leads the Court to examine the marks *in toto* and not dissected. This is also in consonance with the *Amritdhara Principles* where there overall similarity has to be considered. Incidentally, in *Amritdhara (supra)* itself, it was stated that ‘*all the circumstances of the case must be considered*’ taking a foothold on the observations of *Parker, J. in Pianotist Co. Application* extracted under, which continues to be the applicable test:

*“You must take the two words. You must judge them, both by their look and by their sound. You consider the goods to which they are to be applied. You must consider the*



*nature and kind of customer who would be likely to buy those goods. In fact you must consider all the surrounding circumstances; and you must further consider what is likely to happen if each of those trade marks is used in a normal way as a trade mark for the goods of the respective owners of the marks.”*

15.6. The circumstances that one needs to look at while assessing similarity, has also been collated in what is called a ‘*Global Appreciation Test*’ adverted to by this Court in ***ABROS Sports International (P) Ltd. v. Ashish Bansal***, 2024 SCC OnLine Del 3165, relying upon ***AMPM Fashions (P) Ltd. v. Akash Anil Mehta***, 2021 SCC OnLine Del 4945, and extracted as under:

*“37. Essentially, the Division Bench, in relying on the principles enunciated by the Hon'ble Supreme Court in ***Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd.***, (2001) 5 SCC 73, and the factors laid down by the American Courts, was underscoring that a holistic global consideration and assessment needs to be made rather than giving excessive weightage only to isolated factors for assessment of infringement and/or passing off. This theme of integrated, holistic assessment, rather than a compartmentalized approach is echoed by a Single Judge of this Court in ***AMPM Fashions (P) Ltd. v. Akash Anil Mehta***, 2021 SCC OnLine Del 4945, in particular in para 61, 62, where the Court while applying the “global appreciation” test held as under:*

*“61. When applying the test, one has to make a “global appreciation”. The “global appreciation” test requires one to examine, inter alia, the following facets, albeit, holistically as they are inter-dependent:*



(i) *The degree of visual, aural and/or conceptual similarity between the marks.*

(ii) *The overall impression created by the marks.*

(iii) *The impact that the impugned marks have on the relevant public i.e., the matter should be considered through the eyes of an average consumer, who would buy or receive the goods or services.*

(iv) *The distinctive character that the infringed mark has acquired i.e. either because of the mark per se or on account of reputation that it has enjoyed in the public space.*

(v) *That the average consumer has an imperfect recollection.*

(vi) *The degree of similarity between the goods or services, which are purveyed under the rival marks.*

62. It needs to be emphasized that, while evaluating the aforesaid facets, one has to bear in mind the global/composite appreciation test, which enjoins that each of them is inter-connected and explicable, as a whole. In other words, an integrated rather than a compartmentalized approach is required to be adopted. The proclivity of giving weight to one facet as against the other facet(s) is to be abjured. It is only an overall evaluation of all facets which helps in ascertaining, whether or not there is a likelihood of confusion. Likelihood of confusion would arise, if there is a risk of the relevant consumers/public believing that the goods or services offered by the defendants originate from the plaintiff or in some way, are economically or commercially linked to the plaintiff.”

(emphasis added)



15.7. This involves an assessment of various factors, not only one. All aspects must be considered e.g. strength of the marks, similarity between the marks, intent, nature of goods, possibility of confusion, nature of the consumer and market presence. This aspect has already been elaborated upon above in para 13 and 14.

15.8. Taking a cue from this holistic appreciation test, it is to be appreciated that the kernel and soul of defendant's mark, target consumer, market presence, USP (unique selling proposition) is of casual wear which was inspired by icons from the Indian Armed Forces, informally termed as '*military inspired clothing*'. Defendant no.1 was an aeronautical pilot who started his enterprise in 2020 and later realising that there was huge market based on the theme of Armed Forces, fuelled by Indian patriotic fervour, decided to conceptualise the brand as 'AERO ARMOUR'. The defendant states that he checked the TM Register and found no mark which was the same; he decided to go ahead and seek registration. Even though that statement would be subject to the scrutiny of trial, the unique combination of these two words seems to be adopted for a reason: AERO refers to aeronautical part of Armed Forces while ARMOUR is more associated with the military aspect reminding of the armours worn by armies in the historical past, and in fact in more sophisticated form even today. Some evidence was placed by the defendant through a WhatsApp chat to bear this out through a WhatsApp conversation between them and their creative designer; this chat stating that '*the brand would be associating with the aviation and armour category*' which was 80-85% of their business.

15.9. This armed forces inspiration continues to resonate through the rest of



the business proposition adopted by the defendant - *firstly* the design of their



logo . The device adopted by them combines the element of a shield, airplane and stripes to indicate military and aviation ranks and was



reflective of their theme. Notably this device had absolutely no similarity with that of the plaintiff's device, which was essentially.



. Considering that the plaintiff has laid a lot of stress on their device as well, in other decisions passed by this Court, there was no attempt by the defendant to come close to the same and in fact, the plaintiff conceived a completely new logo, which was distinctive in its own right. The font used for their brand as part of the logo is also quite dissimilar to the font used by the plaintiff.

15.10. *Secondly*, the tagline for the brand was, “WEAR YOUR VALOUR” and “WEAR YOUR PRIDE” thereby celebrating the idea of heroism and bravery.

15.11. *Thirdly*, the designs which are on various goods, particularly t-shirts, are



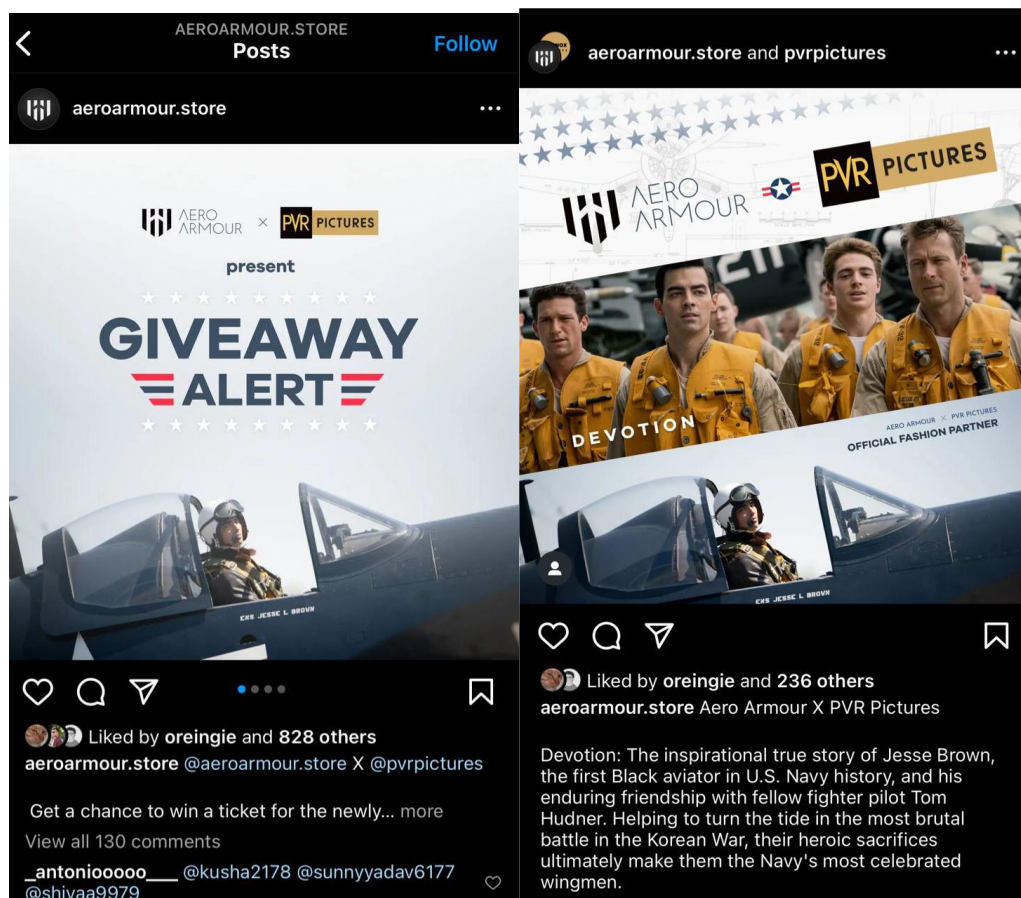
mostly relatable to the armed forces. An illustrative extraction of the same is as follows:



15.12. *Fourthly*, a part of defendant’s supply is to institutions which are associated with armed forces or aeronautical/ defence industry, e.g. TATA Aerospace, Aviation Cell of IIT, and to the Indian Institute of Management.



15.13. *Fifthly*, the promotional outreach of defendant’s products is also based on the same theme.



The defendants have participated in multiple events such as *Aero India*, *Chennai Defence Expo*, *Indian Kargil Marathon Honour Run* and *Dubai Air Show* etc., clearly showing that their whole business proposition was to associate with this theme.

15.14. The facts and circumstances as stated in the para above regarding their unique business proposition, also *prima facie* absolves the defendant from plaintiff's allegation of dishonest adoption. It is quite evident from all the





factors stated above that the defendant had tried to carve out a niche for itself in a unique, distinctive, thematic category of apparel, not intending to generalize the same and was aligned in all respects with that central theme. This is not the usual behaviour of somebody who was dishonestly adopting. In fact, *prima facie*, it seems that the defendant did generally conceive something afresh and unique and has now, along the way, due to the use of the word ARMOUR, along with AERO, has become a defendant in this suit.

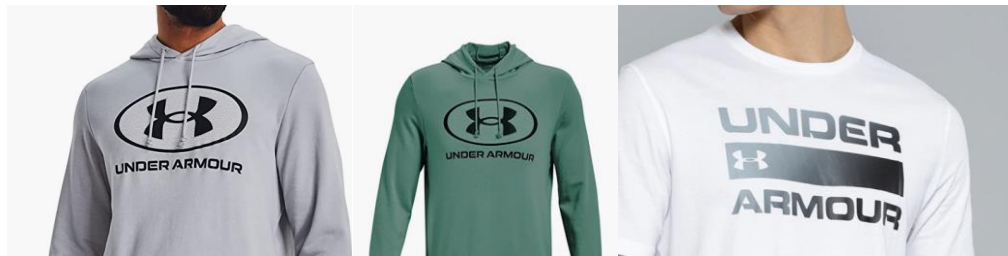
15.15. The plaintiff's contention that dishonest adoption was evident. from the use of "ARMR" by the defendant, could have had some relevance if seen in isolation. However, as the counsel for defendant clarified that "ARMR" was used on a very few products initially, and since has not been used, as also an undertaking was given in the Court by the counsel, that they do not intend to use "ARMR" at all, or at the very least, would give that up, during the suit proceedings.

15.16. The second aspect of dishonest adoption was of the use of the brand "AERO ARMOUR" in a similar manner on the sleeves of their t-shirts, pictures of which have been extracted in para 10.13 above. Yet again, those pictures in isolation give the impression that it is defendant's intent to copy in order to cause confusion. However, it has to be appreciated in the context of other factors as well. While counsel for the defendant did point out that using a brand on the sleeve of a t-shirt is normal in the industry, it is not as if this usage was across all their products in order to cause confusion for every customer. In any event, the defendant would be better restrained from using their brand in a manner that is placed similarly to that of the plaintiff's brand, in particular, this example of



the use on the sleeve.

15.17. Senior Counsel for the defendant pointed out that mostly the defendant's apparel does not have the mark “AERO ARMOUR” on the front of the apparel, in a prominent place, which is different from what the plaintiff does, regards his mark “UNDER ARMOUR”. Plaintiff's mark, or the device, is the main aspect of their apparel, as is evident from these pictorial examples,



15.18. A very critical differentiation, even though the larger category of goods of the plaintiff and defendant are identical, is that while the plaintiff is selling sports apparel, the defendant's goods are casual apparel and even though at first blush it seems like an overlap, this does create different market channels and different sets of consumers who would purchase these products. As has been elaborated in *Mountain Valley Springs India Pvt. Ltd. v. Baby Forest Ayurveda Pvt. Ltd.*, 2024 SCC OnLine Del 3665, by this Court where the element of sophisticated consumer has been underscored, this aspect assumes importance. A customer who will purchase a defendant's product will be doing it for its very Indian iconic theme, imbued with a patriotic fervour or a desire to associate with the ‘Indian-ness’. The plaintiff's goods on the other hand are categorized for sports and are not nationalistic in their theme or flavour but more



designed to appeal to a sportsperson or a person involved in sports. These two kinds of consumers mindsets, even though may be resident in the same person, will involve a different purchasing journey, as also highlighted in *Mountain Valley (supra)*, today's customer is not an ignorant customer but an informed customer who chooses, even if faced with *transient wonderment*, to *find out what the differences could be*.

15.19. The plaintiff's attempt to monopolise the apparel market by excluding all possible brands which have "ARMOUR" in it, is not acceptable, particularly when the Registrar even for other "ARMOUR" marks has provided a disclaimer. Monopolies have been eschewed, even as per the Supreme Court in *Ashok Chandra Rakhit (supra)*, relevant paras of the said judgment are extracted as under:

*"8. The third thing to note is that the avowed purpose of the section is not to confer any direct benefit on the rival traders or the general public but to define the rights of the proprietor under the registration. The registration of a trade mark confers substantial advantages on its proprietor as will appear from the sections grouped together in Chapter IV under the heading "Effect of Registration". It is, however, a notorious fact that there is a tendency on the part of some proprietors to get the operation of their trade marks expanded beyond their legitimate bounds. An illustration of an attempt of this kind is to be found in In re Smokeless Powder Co.'s Trade Mark [LR (1892) 1 Ch 590 : 9 RPC 109]. Temptation has even led some proprietors to make an exaggerated claim to the exclusive use of parts or matters contained in their trade marks in spite of the fact that they had expressly disclaimed the exclusive use of those parts or matters."*



*Reference may be made to Greers Ltd. v. Pearman and Corder Ltd. [(1922) 39 RPC 406] commonly called the “Banquet” case. The real purpose of requiring a disclaimer is to define the rights of the proprietor under the registration so as to minimise, even if it cannot wholly eliminate, the possibility of extravagant and unauthorised claims being made on the score of registration of the trade marks.*

xxx

xxx

xxx

*14. It is true that where a distinctive label is registered as a whole, such registration cannot possibly give any exclusive statutory right to the proprietor of the trade mark to the use of any particular word or name contained therein apart from the mark as a whole. As said by Lord Esher in Pinto v. Badman [8 RPC 181 at p 191]:*

*“The truth is that the label does not consist of each particular part of it, but consists of the combination of them all”.*

*Observations to the same effect will be found also in *In re Apollinaris Company's Trade Marks* [LR (1891) 2 Ch 186], *In re Smokeless Powder Co.*, *In re Clement and Cie* [LR (1900) 1 Ch 114] and *In re Albert Baker & Company* and finally in the *Tudor* case referred to above which was decided by Sargant, J. This circumstance, however, does not necessarily mean that in such a case disclaimer will always be unnecessary. It is significant that one of the facts which give rise to the jurisdiction of the tribunal to impose disclaimer is that the trade mark contains parts which are not separately registered. It is, therefore, clear that the section itself contemplates that there may be a disclaimer in respect of parts contained in a trade mark registered as a whole although the registration of the mark as a whole does not confer any statutory right with respect to that part.”*



(emphasis added)

15.20. Most importantly, the pricing of plaintiff's and the defendant's products, is entirely different. While average price of plaintiff's products is around Rs.2,000/-, the defendant's products are around Rs.799//- per t-shirt. This reflects that the brands operate in different segments and yet again, one must advert to this aspect in relation to the sophisticated consumer as also a different consumer. The issue of a different price point was highlighted by Courts *inter alia* in ***GUFIC Ltd. v. Clinique Laboratories, LLC***, 2010 SCC OnLine Del 2322:

*“24. Another important circumstance is that the price differential between the two products is so vast that no consumer of products of either the appellant or the respondent would confuse one for the other...”*

15.21. Also, when parts of marks are common, discernment requires consumers to look at the dissimilar parts of the products. This aspect was highlighted in ***P.P. Jewellers (P) Ltd. v. P.P. Buildwell (P) Ltd.***, 2010 SCC OnLine Del 932:

*“23. Observations from Kerly's Law of Trade Marks and Trade Names, Fourteenth Edition page 590 are also relevant:*

*“In considering all of the authorities below, it must be borne in mind that they were decided in relation to passing off or under older Trade Mark Acts, with the said, the general principles are as follows:*

*(1) It must not be assumed that a very careful or intelligent examination of the mark will be made;*



(2) But on the other hand, it can hardly be significant that unusually stupid people, “fools or idiots”, or a “moron in a hurry” may be deceived.

(3) If the goods are expensive or important to the purchasers and not of a kind usually selected without deliberations, and the customers generally educated persons, these are all matters to be considered.

(4) If some parts of the mark are common, one must consider whether people who know the distinguishing characteristics of the opponents, mark would be deceived.”

(emphasis added)

15.22. There is complete lack of evidence of actual confusion by consumers and no document was filed by the plaintiff in this regard. The assertion that there is confusion is merely theoretical or speculative in nature.

15.23. Balance of conveniences also in favour of the defendant having commenced their business since 2021 and having achieved a reasonable turnover as well as a reasonable presence considering that they are suppliers to reputed institutions.

15.24. Regards the decision in *Aditya Birla* (*supra*) which related to plaintiff's brand Under Armour and the defendant's brand Street Armour, there are distinguishing factors, aside from the basic tenet that each matter has to be decided on its own facts. Essentially, these are that Street Armour was used in a manner where the ‘Street’ part was imperceptibly small font size as compared to ‘Armour’ and the court stated that the defendant was “*straining every nerve to approach as close to the plaintiff's mark*”. In the fact stated above that



certainly may not be the case for the defendant here. *Secondly*, the subcategory of goods in *Aditya Birla (supra)* was of sportswear for both the plaintiff and the defendant, which is not the case here, as has been pointed out above. *Thirdly*, there was an extensive use of the short form “ARMR” in the case of Street Armour (*supra*) in that following abbreviated versions of marks were used, “STREET ARMOR”, “STRT ARMR”, “ARMR”, “ARMOR”, “SA”, “ARMR DEPT”, “SA DEPT”, “STREET ARMOR CO”, “STRT ARMR LAB” which is not the case here as is noted above.

## **16. Conclusion**

16.1. For these reasons, above, the plaintiff is not entitled to the injunction it seeks. Needless to state this assessment above, is *prima facie*, and issues will have to be finally decided after trial. However, there are some limitations being imposed on the defendants on the manner and use of their mark on their goods, based on submissions made during the hearing, and to excise out aspects of use that may lead to likelihood of confusion.

16.2. Defendants’ counsel during arguments submitted, on instructions, that they are not using ARMR anymore, though used on some products earlier to arrive at a symmetrical abbreviation with AERO. The defendants will be bound by this statement and will not use “ARMR” in any form or manner on any product of theirs, during the pendency of this suit.

16.3. Defendant’s counsel also submitted that placement on the sleeve of the “AERO ARMOUR” mark was an infrequent and isolated use and they do not intend to insist on the same. The defendants would be bound to this statement




and will not use their mark in the manner depicted in para 9 above, during the pendency of this suit.

16.4. Defendant's counsel also submitted that they are only in casual wear and not sportswear, as distinct from the plaintiffs who are into sportswear. Defendants would be held bound to this statement and will not venture into sportswear and not market their goods as sportswear, during the pendency of this suit.

16.5. It was also submitted that predominantly the defendant don't use just the word mark on the front of their apparel, akin to the plaintiff's use, but only the device mark. Defendants would be held bound to this statement and will not use, on the outside layer of the apparel, their word mark "AERO ARMOUR",



but are permitted to use their registered device mark , during the pendency of this suit.

17. Before leaving this discussion, it may be instructive to extract some relevant passages from McCarthy on Trademarks Vol 4, which also inform this opinion of the court:

*"Purchasers of retail services do not engage in trademark dissection. Legal surgery, in which trademarks have parts enhanced or discarded, is of little aid in determining the effect of design marks on purchasers who merely recollect. The scalpel is employed by lawyers, not purchasers" (23: 58 page 370).*





*“A side-by-side comparison is improper, if that is not the way buyers see products in the market.....the Court must determine purchasing public's state of mind when confronted by somewhat similar trade names singly presented” (23: 59 pages 371 – 373).*

*“To arrive at a realistic evaluation of the likelihood of buyer confusion, the court must attempt to recreate the conditions under which prospective purchasers make their choices” (23: 57 pages 366)*

**18.** Accordingly, the plaintiff is not entitled to the injunction it seeks in its application under Order XXXIX Rules 1 & 2, CPC being I.A. 23362/2023 which is disposed of, with only specified limitations on the defendant, as directed in para 16.2-16.5 above.

**19.** Application stands disposed of in terms of these directions.

**20.** Judgment be uploaded forthwith on the website of this Court.

**ANISH DAYAL, J.**

**APRIL, 2024/sm/ig/kp**