

Phonetic and Visual Similarity of Trade Marks in Indian Law: Judicial Interpretations of Cases

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Abstract

Deceptive similarity in trademarks refers to a situation where one mark so closely resembles another that it is likely to mislead or confuse consumers regarding the source of goods or services. This concept is fundamental to trademark law, as it ensures that trademarks fulfil their essential role of distinguishing products in the marketplace and protecting consumer trust. The assessment of deceptive similarity is not limited to identical marks but also extends to those that create an overall impression of resemblance, whether in appearance, sound, meaning, or packaging. The standard is based on the perception of the average consumer, who is guided by imperfect recollection rather than detailed scrutiny. Factors such as the nature of goods, purchasing environment, class of consumers, and manner of trade are all considered in determining whether similarity is deceptive. In sensitive areas like medicines or fast-moving consumer goods, the threshold for confusion is particularly strict due to public interest concerns. Beyond word marks, the scope of deceptive similarity also covers visual elements such as logos, colour schemes, and trade dress, as well as modern contexts like online platforms where initial interest confusion can occur. By preventing unfair advantage and protecting distinctiveness, the doctrine of deceptive similarity upholds the dual objectives of trademark law: safeguarding consumers from confusion and maintaining fair competition in the marketplace. It remains a dynamic, flexible standard that evolves alongside commercial practices and consumer behaviour.

Keywords: Visual similarity, Trade dress, Commercial use, Goods and services, semantic similarity, judicial interpretations.

I. Introduction

The core function of a trade mark is source-identification. When two marks resemble each other so closely that they are “likely to deceive or cause confusion,” the law intervenes to prevent misappropriation of goodwill and protect consumers from mistaking the source of goods or services. Indian trade mark law encapsulates this idea under the statutory rubric of “deceptive similarity,”¹ a concept that has evolved through a dense body of case law long before the present Trade Marks Act, 1999 (“TM Act”) came into force and continues to be refined in contemporary jurisprudence. The doctrine cuts across two principal remedial tracks: statutory infringement of a registered trade mark (primarily under Section 29, TM Act) and the common-law action of passing off preserved by the statute. Though the evidentiary burdens differ, both ask the same essential question: will the impugned sign induce an average consumer of imperfect recollection to believe that the defendant’s goods or services are those of (or connected with) the claimant?

This essay examines the statutory setting; synthesises the judicial tests from leading Supreme Court authorities—*Amritdhara*, *Parle Products*, and *Cadila*; maps special contexts such as pharmaceuticals, trade dress and digital identifiers; and reflects on contemporary issues such as trans-border reputation after *Toyota Prius*. It closes with practical takeaways for brand owners, advisors and adjudicators.

II. Statutory Frame: Definition and Consequences

The TM Act defines “deceptively similar” in Section 2(1)(h): 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.”¹ The definition is deliberately open-textured, recognising that similarity can be visual, phonetic or conceptual; the enquiry is contextual and fact-intensive.

Two statutory consequences are central. First, at the registration stage, Section 11 bars registration of marks identical or similar to earlier marks for identical or similar goods/services where there exists a likelihood of confusion, including a likelihood of association.² This is a relative ground for refusal and structurally mirrors the confusion analysis. Secondly, post-registration, Section 29 delineates infringement. Section 29(1) addresses use of a mark identical with or deceptively similar to a registered mark “in relation to goods or services in respect of which the trade mark is registered,” while Sections 29(2)–(3) extend liability to similar

¹ *The Trade Marks Act, 1999* S 2(1)(h).

² *Trade Marks Act, 1999*, S 11.

goods/services and outline presumptions where identity of mark and goods coincide.³ Although Section 29(1) does not explicitly spell out “likelihood of confusion,” courts frequently read the Section 2(1)(h) definition into the analysis so that the confusion inquiry remains pivotal even under 29(1).⁴

In parallel, the judge-made action of passing off—preserved by Section 27(2) of the TM Act—protects unregistered marks and trade indicia. The plaintiff must generally show goodwill, misrepresentation by the defendant leading or likely to lead the public to believe defendant’s goods/services are those of the plaintiff, and damage (actual or likely). Deceptive similarity is the engine that powers misrepresentation.

III. The Consumer and the “Overall Impression”: Early Supreme Court Tests

Indian courts have consistently underscored that trade mark disputes are not resolved by a meticulous side-by-side comparison in the serenity of a courtroom but by the *first impression* retained by the ordinary consumer with imperfect recollection.

A. *Amritdhara Pharmacy v. Satya Deo Gupta* (1963)

In *Amritdhara*, the Supreme Court assessed whether “Amritdhara” and “Lakshmandhara,” both used for medicinal preparations, were likely to cause confusion. The Court applied the perspective of “a man of average intelligence and imperfect recollection,” emphasising overall structural and phonetic similarity.⁵ Crucially, it recognised that where the trade relates to goods purchased by “illiterate or badly educated” persons, phonetic similarity assumes heightened importance, because consumers recollect the *sound* rather than the etymology of words.⁶ The case crystallised key habits of Indian consumers that still inform the likelihood-of-confusion analysis.

B. *Parle Products (P) Ltd. v. J.P. & Co., Mysore* (1972)

Parle Products carried the doctrine forward in the context of biscuit wrappers. The Supreme Court warned against dissecting marks into their component parts and instead stressed the “broad and essential features” of the impugned get-up.⁷ The decision is celebrated for articulating the *overall similarity* test, and for acknowledging trade dress—packaging, colour scheme, layout—as part of the mark’s indicia capable of generating confusion. It thus foreshadowed modern trade dress jurisprudence and resonates with present-day brand architecture disputes.

C. Synthesis

The early line of authority grounds the Indian approach in three propositions: (i) the benchmark is the average consumer with imperfect recollection; (ii) the comparison asks whether the overall impression of the defendant’s sign is likely to mislead, not whether minute differences can be catalogued; and (iii) phonetic similarity can be decisive, particularly for goods purchased by word of mouth or by less sophisticated consumers.

IV. The *Cadila* Factors and the Pharmaceutical Context

The Supreme Court’s decision in *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.* (2001) is the modern lodestar. Addressing two antimalarial drugs—“Falcitab” and “Falcigo”—the Court, alarmed by the public health risks of confusion in medicines, formulated a non-exhaustive checklist to decide deceptive similarity in passing off actions:⁸

1. Nature of the marks (word/label/composite);
2. Degree of resemblance—visual, phonetic and conceptual;
3. Nature of goods;
4. Similarity in nature, character and performance of goods;
5. Class of purchasers, their education and intelligence, and the degree of care they would exercise;
6. Mode of purchasing or placing orders; and
7. Any other surrounding circumstances.

The *Cadila* factors do not replace the *Amritdhara/Parle* tests; they operationalize them. The factors also signal that similarity analysis is *situational*. Thus, in pharmaceuticals, even a relatively small phonetic proximity may suffice for deception because of the grave consequences of error and because many prescriptions are verbalised, written in haste, or purchased by attendants. Courts have consequently

³ Trade Marks Act, 1999, S 29(1)–(3).

⁴ See E. Ghosh, “On Sections 29(1) and 29(2) of the Trade Marks Act—A Nuanced Distinction,” *SpicyIP* (2017) (noting that 2(1)(h) confusion language informs s 29(1) analysis).

⁵ *Amritdhara Pharmacy v. Satyadeo Gupta*, AIR 1963 SC 449

⁶ *Id.*

⁷ *Parle Products (P) Ltd. v. J.P. & Co., Mysore*, AIR 1972 SC.

⁸ *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*, (2001) 5 SCC 73.

exhibited a lower tolerance for closeness in drug names, placing patient safety above the competitor's freedom to approach the line.

V. Beyond Words: Visual, Phonetic and Conceptual Similarity; Trade Dress

Deceptive similarity is multi-modal. A defendant can keep the letters different and yet conjure confusion by echoing an overall idea (conceptual similarity) or by mimicking get-up and trade dress (visual similarity). *Parle Products* confirms that the wrapper—the spatial arrangement of elements, colours, pictorial motifs—may itself be protectable.⁹ Subsequent High Court decisions have similarly policed trade dress, recognising that consumers frequently navigate supermarket shelves by colour pattern and placement.

Phonetic similarity remains a robust vector in Indian practice, given the multilingual marketplace and prevalence of oral recommendations. the Supreme Court's affirmation in *Mahendra & Mahendra Paper Mills Ltd. v. Mahindra & Mahindra Ltd.* that "Mahendra & Mahendra" was deceptively similar to the well-known business name "Mahindra," underscores that aural proximity, coupled with the plaintiff's distinctive reputation, can trigger injunctive relief even when the defendant adjusts spelling or adds generic elements.¹⁰

VI. Infringement, Passing Off and the Role of "Confusion"

Although infringement and passing off are often pled together, they are distinct. In infringement, the plaintiff relies on registration: if the defendant uses an identical mark for identical goods, confusion may be presumed under Section 29(3). Where marks or goods are merely similar, courts assess likelihood of confusion under Section 29(2). Under Section 29(1), some courts have read confusion through Section 2(1)(h)'s definition even though the sub-section's wording differs; this maintains conceptual coherence across the Act.¹¹ In passing off, the plaintiff must show goodwill plus misrepresentation leading or likely to lead to confusion and damage. In practice, the *Cadila* factors are deployed in both contexts, with the evidentiary threshold sometimes lower for medicines and essential goods.

VII. Special Contexts

A. Domain Names as Trade Marks

The Supreme Court in *Satyam Infoway Ltd. v. Sifynet Solutions (P) Ltd.* (2004) held that domain names can perform the same source-identifying function as trademarks; they are thus protectable under the law of passing off.¹² The Court acknowledged that the internet altered the way consumers encounter marks; a deceptively similar domain name can divert traffic, misappropriate reputation and cause confusion even before a purchase occurs. The *Satyam Infoway* principle reinforces that deceptive similarity is not confined to labels on physical goods but extends to digital identifiers whose "use in the course of trade" is undeniable.

B. Trans border Reputation and Territoriality: Toyota Prius

The Supreme Court's 2017 decision in *Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries Ltd.* reframed the Indian approach to trans-border reputation. Toyota argued that "PRIUS" enjoyed global renown before the defendant adopted the mark in India for auto parts. While recognising Toyota's worldwide goodwill, the Court insisted on proof that *the reputation had spilled over into India* prior to the defendant's adoption date.¹³ Mere international publicity, news reports or internet presence were found insufficient on the facts to establish that Indian consumers, at the relevant time (around 2001), associated "PRIUS" with Toyota's hybrid car. The Court emphasised territoriality and temporality: the plaintiff must prove that its reputation had a real footprint in India when the defendant adopted the mark. The ruling did not jettison trans-border reputation; rather, it required cogent evidence of Indian consumer awareness. The message for rights-holders is clear: maintain records of Indian exposure (advertising spend, media reach, Indian sales inquiries, auto expos, distribution negotiations) to carry the burden.

C. Honest Concurrent Use and Other Equities

At the registration stage, Section 12 envisions bona fide concurrent use as a discretionary exception allowing co-existence with conditions. However, in infringement/passing off suits, assertions of honest adoption or geographic confinement rarely defeat a strong showing of deceptive similarity—especially when the plaintiff's mark is distinctive or well-known. Courts tend to scrutinise the defendant's choice: where the proximity appears avoidable, inference of intent may strengthen the plaintiff's case.

⁹ *Parle Products*, AIR 1972 SC.

¹⁰ *Mahendra & Mahendra Paper Mills Ltd. v. Mahindra & Mahindra Ltd.*, (2002) 2 SCC 147.

¹¹ See text of Section 29, India Code (statutory infringement framework).

¹² *Satyam Infoway Ltd. v. Sifynet Solutions (P) Ltd.*, (2004) 6 SCC 145.

¹³ *Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries Ltd.*, (2018) 2 SCC 1.

VIII. Applying the Tests: Practical Heuristics

While the jurisprudence is case-specific, a number of heuristics emerge from the authorities:

1. **Start with the consumer.** Identify the notional purchaser, her level of attention, and the purchasing environment. In fast-moving consumer goods or low-involvement purchases, smaller similarities loom larger; in high-value, expert-assisted purchases, the consumer are more careful.¹⁴
2. **Compare the marks as a whole.** Do not place them side by side to catalogue differences. Ask what *impression* survives after a fleeting glance or aural recall.¹⁵
3. **Mind the mode.** If orders are placed orally or the goods are requested by name (as with prescription drugs), phonetic similarity carries special weight.¹⁶
4. **Trade dress can decide cases.** Colour schemes, layout, pictorial devices and packaging architecture are not decorative trivia; they are part of the source cue and can mislead when copied.¹⁷
5. **Context is king.** The same degree of similarity may be benign for niche industrial goods but dangerous for over-the-counter medicines. Courts calibrate the threshold accordingly.¹⁸
6. **Evidence matters—especially for trans-border claims.** For spill-over reputation, adduce dated material showing Indian reach *by the relevant date*; general international fame will not carry the day post-*Toyota Prius*.¹⁹

IX. Remedies and Enforcement

Where deceptive similarity is established, plaintiffs typically seek interim and final injunctions restraining use of the offending sign, delivery-up of infringing materials, damages or an account of profits, and corrective advertising in appropriate cases. Interim relief hinges on classic triad tests—*prima facie* case, balance of convenience and irreparable harm—but the confusion analysis is often determinative. Criminal sanctions under Chapter XII (Sections 101–104) address falsification and false application of marks; while invoked less frequently in civil disputes, they remain part of the toolkit for egregious counterfeiting. Courts also craft targeted orders—e.g., requiring change of corporate names, domain transfers, or packaging modifications—to neutralise specific deception vectors.²⁰

X. Normative Considerations: Competition, Speech and Over-Protection

The doctrine's elasticity—"likely to deceive or cause confusion"—invites a cautionary note. Courts must guard against granting trade mark owners a monopoly over descriptive or generic elements that the market needs to use. The *overall impression* test should not be subverted by over-reliance on common prefixes/suffixes or colour palettes widely used in a trade. Equally, legitimate comparative advertising and parodic uses should not be chilled by aggressive enforcement that confuses *association* with *confusion*. The jurisprudence generally reflects this balance by considering the distinctiveness of the earlier mark, the presence of disclaimers, and the defendant's adoption story.

XI. Conclusion

The Judicial activism introduced a multifactor test and raised the threshold for pharmaceutical products due to public health risks. More recent rulings illustrate the nuanced application of the doctrine across classes of goods and services, with emphasis on reputation and unfair advantage. The scope of deceptive similarity extends beyond word marks to trade dress, packaging, and even domain names, reflecting the dynamic nature of commerce. In the digital era, courts have also acknowledged doctrines such as initial interest confusion in online platforms. Deceptive similarity is the fulcrum of Indian trade mark enforcement. Statutorily defined yet judicially textured, it resists formulaic application and commands attention to marketplace realities. From *Amritdhara*'s ordinary consumer and *Parle*'s overall impression to *Cadila*'s structured factors and *Toyota Prius*'s insistence on territorial proof of reputation, the doctrine has matured into a nuanced, context-sensitive inquiry. Its animating purpose remains stable: prevent consumer deception and preserve the integrity of trade origin, while leaving room for healthy competition and fair descriptive use. For brand owners, this means building distinctive signs, auditing proximity risks before launch, documenting reputation (especially in India), and designing trade dress that is defensible. For adjudicators, it means keeping the

¹⁴ See *Cadila* factors (class of purchasers; degree of care).

¹⁵ *Parle Products* (overall impression; no side-by-side dissection).

¹⁶ *Amritdhara* (phonetic similarity in medicine purchases).

¹⁷ *Parle Products* (trade dress), and modern trade dress analyses referencing *Parle*'s approach.

¹⁸ *Cadila* (heightened scrutiny for pharmaceuticals).

¹⁹ *Toyota Prius* (need for proof of Indian spill-over reputation by the adoption date).

²⁰ For statutory remedies and illustrative enforcement approaches, see TM Act chs XI–XII; see also general overviews

consumer in clear view, testing similarity in the wild rather than in a laboratory, and tailoring relief to dispel confusion without unduly fencing off the commons.

References

- [1] Trade Marks Act, 1999, s 2(1)(h) (India) (“deceptively similar”), *available at* India Code. *Id.*; see also *The Trade Marks Act, 1999* (official text, India Code PDF), s 2(1)(h).
- [2] Trade Marks Act, 1999, s 11 (relative grounds for refusal of registration). Trade Marks Act, 1999, s 29(1)–(3).
- [3] See E. Ghosh, “On Sections 29(1) and 29(2) of the Trade Marks Act—A Nuanced Distinction,” *SpicyIP* (2017) (noting that 2(1)(h) confusion language informs s 29(1) analysis).
- [4] *Amritdhara Pharmacy v. Satyadeo Gupta*, AIR 1963 SC 449 (Supreme Court of India). *Id.* (average intelligence and imperfect recollection; phonetic similarity).
- [5] *Parle Products (P) Ltd. v. J.P. & Co., Mysore*, AIR 1972 SC 1359; see also the judgment text, Indian Kanoon.
- [6] *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*, (2001) 5 SCC 73; see judgment excerpt listing factors, Indian Kanoon.
- [7] *Parle Products*, AIR 1972 SC 1359 (trade dress/overall get-up).
- [8] *Mahendra & Mahendra Paper Mills Ltd. v. Mahindra & Mahindra Ltd.*, (2002) 2 SCC 147; see Indian Kanoon case record. See text of Section 29, India Code (statutory infringement framework).
- [9] *Satyam Infoway Ltd. v. Sifynet Solutions (P) Ltd.*, (2004) 6 SCC 145; see Indian Kanoon record.
- [10] *Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries Ltd.*, (2018) 2 SCC 1 (arising from 2017 decision); see Indian Kanoon; see also commentary on territoriality principle.
- [11] See *Cadila* factors (class of purchasers; degree of care).
- [12] *Parle Products* (overall impression; no side-by-side dissection).
- [13] *Amritdhara* (phonetic similarity in medicine purchases).
- [14] *Parle Products* (trade dress), and modern trade dress analyses referencing *Parle*’s approach.
- [15] *Cadila* (heightened scrutiny for pharmaceuticals).
- [16] *Toyota Prius* (need for proof of Indian spill-over reputation by the adoption date).
- [17] For statutory remedies and illustrative enforcement approaches, see TM Act chs XI–XII; see also general overviews.