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Trademark Disputes in India's FMCG Sector: Visual Identity, Legal Ownership, and Implications for Design Practice

Nitin Vishwakarma[†]

Institute of Design, JK Lakshmipat University, Jaipur – 302 026, India

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The study investigates the Indian trademark jurisprudence on the interpretation of visual identity as trade dress in the fast-moving consumer goods (FMCG) industry and the implications of such judicial reasoning on design practice and education. Through a qualitative doctrinal analysis of specific Supreme Court and High Court decisions, as well as an empirical survey of 100 design students, educators, and practitioners, this research explores the relationship between visual design choices and legal standards of distinctiveness, consumer confusion, and passing off. Theresults show a structural gap between the relatively high awareness of trademark among designers and the lack of understanding of trade dress. The court rulings show that the judiciary is increasingly applying packaging, colour, layout, and form as communicative and commercial signs rather than aesthetic ones. However, this logic is not incorporated into design education.Theargument of this paper is that designers are de facto legal actors in branding systems, and legal literacy, especially in trade dress, should be incorporated into design education. This paper translates judicial logic into design terms and thus contributes to the interdisciplinary field of intellectual property law and communication design.

Keywords: Trade Dress, Visual Identity, Branding, Consumer Confusion, Indian IPR, Design Law

Visual identity works as an effective communication tool in the fast-paced world of Fast-Moving Consumer Goods (FMCG), often aiding consumers to make purchasing decisions in few seconds. Packaging design, colours, structures, and typography have all been developed as key touch points for brand awareness and loyalty. These components can be assembled, and when assembled in a certain way, are what the law recognizes as "trade dress," the overall visual appearance of a product or product line that signifies its origin. Overall, however, in the Indian design and branding sphere, this relationship between visual identity and legal protection, specifically the intellectual property framework, has not been explored.

The convergence of design authorship and legal authorship is increasingly evident in India's FMCG sector, where disputes over packaging, colour palettes, and brand presentation have led to legal battles—one particularly visible in trade dress. Landmark cases such as*Parle Products* v *J.P. & Co. Mysore* (1972),[1] *Colgate-Palmolive* v *Anchor* (2003),[2] and *Gorbatschow Wodka KG* v *John Distilleries Ltd.* (2011)[3] demonstrate how courts interpret packaging not as abstract aesthetic form, but as commercial and communicative capital.

Even though designers are both crucial to the development of these identities, there is still a significant disconnect between design discipline, and its application of legal theory and jurisprudence. The international design literature is increasingly recognizing the strategic aspects of brand identity,[4] whilst, Indian design academia continues to treat intellectual property education, as an ancillary issue to visual communication design and packaging.

This disconnect raises important pedagogical and professional questions: *What do Indian design professionals, students, and educators understand about trademarks and trade dress? How often that knowledge is applied in real-world or classroom contexts? And what can legal case studies tell us about how visual identity is interpreted under the law?*

Combining doctrinal analysis of landmark Indian trademark cases with empirical data from a national survey of 100 design stakeholders, this study investigates the cultural, legal, and educational implications of this disconnection. It argues that visual identity is no longer a purely formal concern—it is a *legal* and *institutional* phenomenon. If designers are to claim authorship in a world where form is

[†]Email: nitvit.design@gmail.com

capital, they must also learn to speak the language of ownership.

Trade Dress, Visual Identity, and Design Practice: Prior Scholarship

Scholarship across intellectual property law, branding, and visual communication has increasingly recognised visual identity as a critical interface between creative practice, market competition, and legal regulation. Within trademark law, *trade dress* has evolved to protect the non-verbal dimensions of branding, including packaging design, colour combinations, layout, typography, and three-dimensional form, when such elements function as indicators of commercial origin.[5] This doctrinal development reflects the growing recognition that brand meaning is communicated visually as much as linguistically.

Branding and consumer behaviour literature has thoroughly shown that brand equity is created through consumer perception rather than ownership per se. Keller[6] states that visual consistency is a key component in creating brand associations, recall, and loyalty, especially in low-involvement purchase situations. Empirical research also illustrates that packaging design, colour, and shape have a material impact on consumer choice in fast-moving consumer goods markets, where consumer choices are made quickly and with little cognitive deliberation.[7] Although this literature provides important information on the role of visual identity in markets, it typically considers visual form as a strategic or psychological factor, rather than a constructively interpreted legal aspect.

From a legal perspective, scholarship on trade dress has focused primarily on doctrinal standards governing protection and enforcement. Legal analyses have examined principles such as passing off, likelihood of confusion, and acquired distinctiveness, emphasising the role of consumer perception in judicial decision-making.[8] In common law jurisdictions, courts increasingly rely on perception-based tests, assessing similarity from the standpoint of an average consumer with imperfect recollection. This approach, while doctrinal in form, implicitly draws upon perceptual and semiotic logics without explicitly engaging with design theory.

Within the Indian context, intellectual property scholars have documented the evolution of trade dress jurisprudence alongside the expansion of consumer markets. Watal[9] highlights the need for intellectual property frameworks in developing economies to account for diverse creative industries and market practices. Subsequent legal scholarship has analysed Indian courts' treatment of packaging, colour schemes, and product configuration in trademark disputes, noting a gradual willingness to recognise non-traditional visual elements as protectable subject matter under passing-off principles.[10] However, these studies largely remain confined to legal reasoning and precedent, with limited engagement with how such visual identities are conceived and executed within professional design practice.

Notably, limited scholarship has examined the intersection between trade dress jurisprudence and design education or professional design workflows. Design studies literature frequently emphasises creativity, narrative construction, and user engagement in branding and packaging design[11], while legal considerations are often positioned as external constraints addressed post-production. As a result, designers' role in generating legally consequential visual identity remains underexplored within both legal and design research.

Moreover, empirical research investigating designers' awareness of trade dress principles or their understanding of judicial interpretations of visual similarity is scarce. This gap is significant because courts evaluate trade dress based on consumer perception rather than on creative intent, positioning routine design decisions within a legal evaluative framework that operates independently of designers' rationales. Addressing this lacuna, the present study brings doctrinal legal analysis into dialogue with empirical insights from design practitioners. Rather than advancing a new theory of trade dress, it situates existing legal and design scholarship within a shared analytical space, setting the stage for the theoretical framework outlined in the following section.

At the intersection of design authorship and legal interpretation lies a rich and underexplored terrain where visual form acquires institutional meaning. This inquiry is grounded in three overlapping theoretical domains: *visual semiotics*, *brand equitytheory*, and the emerging discourse of *legal design thinking*.

Visual semiotics, grounded in the work of Roland Barthes, provides the foundation for analysing how packaging design operates as a system of signs. Trade

dress elements—colour, shape, typography, and spatial layout—function as signifiers that convey brand meanings, emotional associations, and cues about origin or quality.[12]Visual signifiers are then decoded by consumers through cultural knowledge and market experience. In trademark law, the legal interpretation of deceptive similarity is often dependent upon semiotic interpretations, even if not stated analytically that way.

Brand Equity theory, especially the consumer-based model articulated by Kevin Keller (customer-based brand equity-CBBE),[13] suggests that the value in a brand lies in a series of consistent and recognizable experiences that have created brand knowledge structures for consumers. Packaging is one of the more visible brand touchpoints and plays an important role in creating brand recall and loyalty, especially in congested and competitive industries, such as the Indian Fast-moving consumer goods sector. In this case, packaging as a visual identity is important not only in a decorative context, but also for competitive advantage and positioning.

The third anchor, ***legal design thinking***, draws on the emerging literature that is reconciling design, and design principles like empathy, clear communication and systems thinking, with legal processes. Margaret Hagan[14]advocates for law as a user-centred experience, where systems are improved through visual and spatial design. Mark Szabo[i] expands this idea into law practice management, to consider transparency, usability and interdisciplinary thinking. Within this framing, intellectual property rights (IPR) are no longer post-facto protections, but active agents in shaping the ethics, strategy, and authorship of design.

By aligning these three lenses—semiotic, strategic, and procedural—this framework situates trade dress as a site where design and law co-produce meaning, authorship, and ownership. It also underscores the pedagogical urgency of integrating legal literacy into design education—not as an external discipline, but as a necessary mode of critical inquiry and professional preparedness.

Key Terminology and Definitions

In the interest of clarity, the following terms are used consistently within this study:

Trade dress encompasses the overall visual look of a product or its package, which acts as a badge of commercial origin. This encompasses various aspects, including colour schemes, package layout, typography, graphics, surface decor, and 3-D form.

Passing off, as a doctrine, assumes functional significance in the Indian system of trademark law for the protection of unregistered trademarks by guarding against any kind of misrepresentation likely to cause confusion amongst the consumers.

*Acquired distinctiveness,*which is commonly referred to as secondary meaning, involves some visual attribute or set of attributes that, because of extensive and continuous usage, becomes identified in the consumer's mind as being solely with the business as opposed to the category itself.

Likelihood of confusion refers to the probability that an average consumer, exercising ordinary attentiveness and having imperfect recollection, may mistakenly assume a connection or association between competing goods due to similarities in their visual presentation.

Imperfect recollection acknowledges that consumers do not retain exact visual memories of products and instead rely on general impressions formed through prior exposure.

Overall visual impression refers to the holistic perception created by the combined effect of visual elements—such as colour, layout, typography, and form—rather than an element-by-element comparison.

Visual identity, as used in this study, comprehends the designed visual characteristics of a product or brand, including colour schemes, typographic treatment, packaging configuration, graphic composition, and structural form, as perceived collectively by consumers.

Source identifier refers to any visual or verbal element that enables consumers to identify the commercial origin of goods, whether or not such elements are formally registered as trademarks.

Goodwill relates to the overall brand associations and reputation built up for a brand and product over a long term of use and presence.

Dilution refers to the weakening of the distinctive mark or trade dress through use in a way that diminishes the likelihood of signification by a single commercial source, even in the absence of consumer confusion.

*Comparative advertising*are promotional messages that involve the comparison of an entity with another competing entity, either through explicit comparison, comparative representation, or symbolic similarity.

Functional elements represent the parts of the product or the package where utilitarian functions are to be served. These can also be granted trade dress

protection, provided the distinctiveness of symbols of origin is achieved.

Intellectual Property Rights (IPR), in the context of this study, refer primarily to trademark and passing-off protections as they relate to visual identity and branding in the FMCG sector.

The research employs a multi-method approach, combining doctrinal analysis of trade dress in trademark disputes with empirical data, offering insights into how intellectual property rights are understood and engaged with by India's designer community.However,this research does not attempt to generalize statistically but wants to achieve analytical convergence between legal interpretation and professional understanding of design.

Doctrinal Legal Research

A case study–based doctrinal review of Indian trademark litigation was undertaken, focusing on disputes in which trade dress and visual identity constituted the central point of contestation. Seven judicial decisions between 1972 and 2017 were purposively selected from the Supreme Court of India and metropolitan High Courts, as these forums have historically shaped authoritative interpretations of trademark and passing-off principles in the FMCG sector. This study does not claim uniform national jurisprudence; rather, it examines dominant interpretive tendencies emerging from leading judicial forums where trade dress disputes are most frequently litigated and doctrinally elaborated.Eachcase was examined using four analytical lenses: Case Summary, Legal Issue, Court Ruling, and Design Implications.The selected intellectual property (IP) cases are:

1. *Parle Products Pvt. Ltd.* v *J.P. & Co. Mysore* (1972)
2. *Colgate-Palmolive Co.* v*Anchor Health and Beauty Care Pvt. Ltd.* (2003)
3. *Marico Ltd.* v*Raj Oil Mills Ltd.* (2008)
4. *Hindustan Unilever Ltd.* v*CavinKare Pvt. Ltd*. (2010)
5. *Gorbatschow Wodka KG* vJohn Distilleries Ltd. (2011)
6. *ITC Limited* v *Britannia Industries Ltd.* (2016)
7. *PepsiCo Inc.* v *Dugar Spices and Foods* (2017)

All cases were selected to be relevant to design practitioners as these are all disputes solely based on packaging, design, or other non-conventional trademarks. By examining the legal decisions, this paper tries to explain how visual identity is understood and protected in law, in a country like India. Secondary sources consulted were academic articles, legal reviews, and professional commentary by designers.

Empirical Survey Design

A structured online survey using Google Forms was circulated through academic networks, social media, and professional mailing lists across India. Targeting design students, practitioners, and educators, it assessed awareness and application of IPR principles, highlighting divergences from judicial expectations rather than compliance.

Survey Structure

The questionnaire comprised four sections:

(i) Demographic and professional background,
(ii) Familiarity with IPR concepts (measured on a 5-point Likert scale),
(iii) Application of trademark and trade dress in design practice,
(iv) Attitudinal and qualitative responses on challenges and expectations.

Both quantitative items (closed ended) and qualitative questions (open-ended) were included to enable a comprehensive analysis.

Data Analysis Techniques

Quantitative data was analysed using descriptive statistics, Chi-Square tests, and cross-tabulations to examine IPR awareness and application. Qualitative responses underwent open coding and thematic analysis, identifying recurrent patterns and barriers shaping designers' engagement with intellectual property literacy.

Ethical Considerations

Participation in the survey was entirely voluntary, and all data was collected anonymously. Informed consent was obtained at the beginning of the form, and participants were given the option to opt out of follow-up contact. The study adhered to ethical standards for academic research involving human subjects.

Limitations

This study, positioned at the intersection of intellectual property law and design practice, offers insight into how designers in India understand and engage with legal constructs such as trademarks and trade dress. As with any interdisciplinary inquiry, the scope of the study is subject to methodological and contextual boundaries that shape the interpretation of its findings.

The empirical component relied on an online survey, which, while geographically broad, was self-reported and may not fully reflect participants applied legal knowledge. The sample of 100 respondents—students, educators, and practitioners—was largely drawn from formal design ecosystems, limiting insight into freelance, rural, or craft-based practices. The absence of ethnographic or studio-based observation further constrains understanding of how legal knowledge is enacted in live workflows. Legally, the analysis focused on Indian trademark jurisprudence in the FMCG sector, offering concentrated insights but not uniform national applicability or transferability to other domains. These limitations highlight the complexity of studying law within creative disciplines. Nonetheless, by combining doctrinal analysis with practitioner perspectives, the study establishes a foundation for future research that is more ethnographically embedded, sectorally diverse, and attentive to law's role in design practice.

Analysis of Case Studies

***Parle Products Pvt. Ltd.* V *J.P. & Co. Mysore* (1972)**

Case Summary: Parle Products sued J.P. & Co. for selling biscuits in packaging that closely resembled Parle's "Gluco" biscuits.

Legal Issue: Whether the overall look and feel of J.P. & Co.'s biscuit packaging was deceptively similar to Parle's trade dress, thereby causing confusion among consumers.

Court Ruling: The Supreme Court of India held that comparison must be based on overall impression through consumer memory—not a side-by-side comparison. It concluded that Parle's wrapper was distinctive, and the defendants was deceptively similar, favouring the plaintiff.

Findings: This decision illustrates an early and influential articulation of perception-based analysis in Indian trademark jurisprudence. The Court emphasised that visual elements such as colour schemes, illustrations, and layout must be assessed collectively, as consumers typically retain a general impression rather than precise details of packaging. While the judgment did not explicitly employ the terminology of "trade dress," it established principles that later informed the development of trade dress protection in India. Analytically, the case demonstrates judicial sensitivity to visual identity as a communicative whole and underscores the relevance of consumer perception in evaluating packaging similarity—an approach that has continued to shape subsequent trademark and trade dress adjudication.

***Colgate-Palmolive Co.* v *Anchor Health and Beauty Care Pvt. Ltd.* (2003)**

Case Summary: Colgate-Palmolive filed a lawsuit against Anchor, alleging that Anchor's toothpaste packaging mimicked Colgate's distinctive red-and-white colour scheme and layout, causing confusion among consumers (Fig. 1)

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Legal Issue: The core issue was whether Anchor's packaging constituted infringement of Colgate's trade dress, even though Anchor used a different wordmark. The case primarily revolved around whether the overall appearance of a product could be protected under trademark law.

Court Ruling: In Colgate-Palmolive Co. & Anr. v. Anchor Health and Beauty Care Pvt. Ltd., the Delhi High Court ruled in favour of Colgate, affirming that the red-and-white colour scheme of its toothpowder packaging had acquired distinctiveness and was protected under the common law principle of passing off. The court held that Anchor's use of similar trade dress could confuse consumers, especially in rural areas where product identification is often colour-dependent

Finding: The decision illustrates judicial recognition of packaging colour schemes and layout as legally significant elements of brand identity within passing-off jurisprudence. While the Court did not treat colour alone as an independently registrable trademark, it acknowledged that the overall visual configuration of



Fig. 1 — *Colgate-Palmolive Co.* v *Anchor Health and Beauty Care Pvt. Ltd.*
Source: https://www.theipmatters.com/post/colgate-palmolive- india-ltd-anr-v-anchor-health-and-beauty-care-pvt-ltd

packaging may function as a source identifier when it has acquired distinctiveness in the minds of consumers. Analytically, the case reinforces the relevance of visual perception in FMCG markets and demonstrates how courts assess trade dress similarity even where competing products bear different brand names. For design practice, the ruling underscores that replication of established visual codes—particularly colour-based identities—may invite legal scrutiny when such codes are closely associated with a single commercial source.

***Marico Ltd.* v *Raj Oil Mills Ltd.* (2008)**

Case Summary: Marico, maker of Parachute Coconut Oil, issued an injunction request against Raj Oil Mills for copying their distinctive bottle cap design (Fig. 2).

Legal Issue: Whether a bottle cap design registered under the Designs Act qualifies as trade dress or design infringement.

Court Ruling: The Bombay High Court recognized the cap's design as a distinctive visual element. Marico's injunction was upheld based on the Designs Act registration and artistic work protection.

Findings: The decision illustrates judicial willingness to protect distinctive three-dimensional packaging elements primarily through design law rather than through an independent application of trade dress doctrine. While the Court acknowledged the cap as a visually distinctive feature associated with Marico's product, its reasoning was grounded in statutory design protection rather than in an expansion of trademark or trade dress principles.

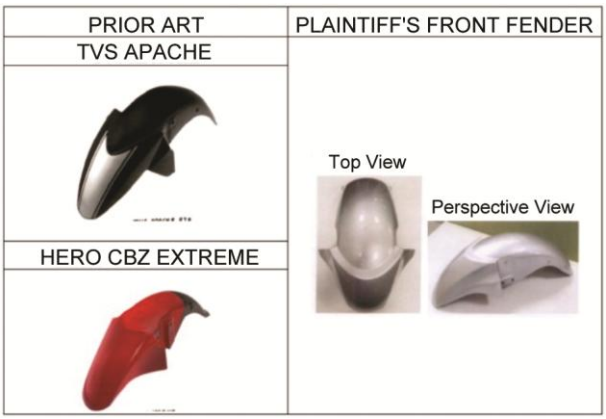


Fig. 2 — *Marico Ltd.* v *Raj Oil Mills Ltd.*
Source: https://files.lexology.com/images/lexology/static/870bc8ff-d2db-48d2-9242-9915339dd6ae.png

Analytically, the case demonstrates the layered nature of visual identity protection in Indian law, where three-dimensional packaging features may be safeguarded under design legislation even when trade dress protection remains circumscribed. For design practice, the ruling highlights that uniquely designed functional packaging elements can acquire legal significance when consistently associated with a brand, but that the applicable legal route, design registration versus trade dress, remains determinative.

***Hindustan Unilever Ltd.* v *CavinKare Pvt. Ltd.* (2010)**

Case Summary: Hindustan Unilever Ltd. (HUL) challenged a shampoo advertisement released by CavinKare, alleging that the advertisement constituted misleading comparative advertising and amounted to disparagement of HUL's product and associated visual presentation.

Legal Issue: Whether comparative advertising crossed the line into misleading trade dress or disparagement of HUL's visual branding.

Court Ruling: The Delhi High Court held that comparative advertising is permissible only so long as it does not mislead consumers or disparage a competing product. The Court found that the impugned advertisement was likely to mislead viewers and denigrate HUL's product and accordingly granted an injunction restraining its continued broadcast.

Findings: This decision clarified judicial boundaries governing comparative advertising where visual representation plays a central role. The Court recognised that visual mimicry and misleading depictions in advertisements can adversely affect consumer perception and dilute brand goodwill. While the case did not expand trade dress protection in isolation, it affirmed that visual elements used in advertising and promotional materials may attract legal scrutiny when they function as identifiers of source or quality and operate in conjunction with established brand identity. The ruling thus highlights the relevance of visual communication strategies within trademark and trade dress disputes arising from marketing contexts.

***Gorbatschow Wodka KG* v *J ohn Distilleries Ltd.* (2011)**

Case Summary: The plaintiff challenged John Distilleries' bottle shape, claiming it mimicked Gorbatschow's distinctive vodka bottle trade dress (Fig. 3).



Fig. 3 — Gorbatschow Wodka KG v. John Distilleries Ltd. Source: https://spicyip.com/2011/05/bombay-hc-on-passing-off-shape-of-vodka.html

Legal Issue: Whether the bottle shape alone can serve as distinctive trade dress to prevent passing off.

Court Ruling: Bombay High Court granted an interim injunction, affirming that the bottle's shape was distinctive and protected trade dress.

Findings: The decision illustrates judicial recognition of three-dimensional product shape as a potentially protectable element of visual identity within passing-off jurisprudence. The Court accepted that the plaintiff's bottle shape had acquired distinctiveness through sustained commercial use and consumer association, sufficient at an interim stage to warrant protection. Although the ruling did not lay down a principle that all product shapes would automatically fall within the ambit of trade dress, it showed that three-dimensional configurations could also attract legal protection in cases where they function as source identifiers and not merely as functional forms. Analytically, this case indicates that under Indian law, trade dress is not a two-dimensional concept relating to packaging features but may extend even to product configuration, subject to strict tests for distinctiveness and likelihood of confusion.

***ITC Limited* v*Britannia Industries Ltd.* (2016)**

Case Summary: ITC alleged that Britannia's NutriChoice Digestive Zero packaging copied ITC's Sunfeast Farmlite digestive biscuit trade dress (Fig. 4).

Legal Issue: Whether colour scheme and layout similarity were sufficient to constitute deceptive trade dress under the Trademarks Act.



Fig. 4 — ITC Limited v Britannia Industries Ltd. Source: https:// indiancaselaws. wordpress.com/2017 /03/11/britannia-industries-ltd-v-itc-ltd/

Court Ruling: Delhi High Court restrained Britannia, recognizing that packaging elements like layout and colour can mislead consumers if too similar.

Findings: The decision illustrates judicial sensitivity to the collective effect of visual elements in FMCG packaging. The Court accepted that even in the absence of identical wordmarks or logos, similarities in colour palette, layout, and compositional structure may give rise to consumer confusion when such elements operate together as identifiers of source. While the ruling did not treat colour or layout as independently protectable in isolation, it reinforced the principle that overall visual impression remains central to trade dress and passing-off analysis. Analytically, the case highlights the legal relevance of visual coherence and perceptual proximity in competitive packaging environments, underscoring that imitation of established visual configurations may attract legal scrutiny in densely populated FMCG markets.

***PepsiCo Inc.* v *Dugar Spices and Foods* (2017)**

Case Summary: PepsiCo claimed that Dugar Spices sold snack products with packaging mimicking Kurkure's visual identity through similar colour, typography, and layout (Fig. 5).

Legal Issue: Whether packaging similarity constituted trade dress infringement based on likelihood of confusion.

Court Ruling: Delhi High Court granted an injunction, finding the contested packaging deceptive and infringing PepsiCo's trade dress rights.



Fig. 5 — *PepsiCo Inc.* v *Dugar Spices and Foods*
Source: https://www.pepsico.com/, https://www.taquitos.net/chips/Kurmure-Chicken

Findings: The Court accepted that similarities in colour scheme, typographic style, and graphic layout, when viewed together, could function as indicators of source and give rise to consumer confusion, even in the absence of identical logos or brand names. While the ruling did not treat individual visual elements as independently protectable, it reinforced the principle that trade dress analysis turns on overall perceptual similarity rather than on isolated features. Analytically, the case underscores the legal relevance of integrated visual design in FMCG packaging and highlights the risks associated with close imitation of established visual configurations in competitive consumer markets.

Cross-Case Synthesis: Judicial Logic, Visual Identity and Design Risk

A comparative reading of the selected Supreme Court and High Court decisions reveals a coherent judicial logic in how Indian courts approach trade dress disputes in the FMCG sector. Rather than treating visual identity as a peripheral or aesthetic concern, courts consistently evaluate packaging, colour schemes, layout, and three-dimensional form as *communicative signifiers* capable of indicating commercial origin. While the factual circumstances of each case differ, the judicial reasoning across these decisions converges around three recurring principles that are directly relevant to design practice.

First, courts privilege overall visual impression over granular differentiation. Beginning with *Parle Products Pvt. Ltd.* v *J.P. & Co. Mysore*, the Supreme Court established that trade dress infringement must be assessed from the perspective of an average consumer with imperfect recollection, rather than through a meticulous side-by-side comparison. This approach has been repeatedly reaffirmed in later High Court decisions, including *Colgate-Palmolive* v *Anchor* and *ITC Ltd.*v *Britannia Industries Ltd.*, where even the absence of identical logos or wordmarks did not preclude a finding of deceptive similarity. From a design standpoint, this judicial stance places emphasis on gestalt qualities—colour harmony, spatial hierarchy, compositional balance, and visual rhythm—rather than on isolated design elements.

Second, the cases demonstrate a judicial willingness to recognise non-traditional and non-registered visual elements as protectable trade dress, provided they have acquired distinctiveness through sustained market presence. Decisions such as *Marico Ltd.* v *Raj Oil Mills Ltd.* and *Gorbatschow Wodka KG* v *John Distilleries Ltd.* illustrate that trade dress protection may extend beyond two-dimensional graphics to include three-dimensional form, packaging configuration, and even functional elements, once these are shown to operate as source identifiers. This jurisprudential move blurs the boundary between design protection under the Designs Act and trademark protection under passing-off principles, thereby increasing the legal salience of everyday design decisions in FMCG packaging.

Third, courts consistently anchor their analysis in consumer perception rather than authorial intent or design rationale. In cases involving comparative advertising and promotional imagery, such as *Hindustan Unilever Ltd.* v *CavinKare Pvt. Ltd.*, judicial scrutiny focused on the likelihood of consumer deception and dilution of brand identity rather than on claims of creative freedom or marketing strategy. This reinforces the principle that legal evaluation of visual identity is outcome-oriented: what matters is not why a design choice was made, but how it is likely to be interpreted in the marketplace.

Taken together, these judicial tendencies point to the consolidation of a functional, perception-based doctrine of trade dress, one that mirrors the variables systematically manipulated in design practice—colour, layout, typography, form, and visual hierarchy. Importantly, the cases do not suggest an unqualified expansion of trademark rights across all jurisdictions or contexts; rather, they indicate a dominant interpretive tendency within leading judicial forums dealing with FMCG disputes. The implication for design practice is not that creativity is curtailed,

Table 1 — Judicial interpretation of trade dress and implications for design practice in Indian FMCG Litigation

Visual Design Variable	Legal Test Applied by Courts	JudicialReasoning Pattern	Design Practice Implication
Colour schemes and palettes	Acquired distinctiveness; passing off	Colour combinations, when consistently used and widely recognised, are treated as contributing to source identification within overall trade dress	Colour decisions must be evaluated against established market visuals, as visual convergence can trigger infringement risk
Packaging layout and composition	Overall visual impression; imperfect recollection	Courts consistently privilege gestalt perception over element-by-element comparison	Designers must account for cumulative visual similarity rather than rely on isolated differentiators
Typography and graphic style	Likelihood of consumer confusion	Typographic tone, hierarchy, and graphic style are assessed as reinforcing deceptive similarity in conjunction with other visual cues	Typeface selection and typographic hierarchy function as legally consequential design decisions in competitive FMCG contexts
Three-dimensional form and shape	Distinctiveness through use; source identification	Product configuration is recognised as protectable where shape operates as an indicator of commercial origin	Industrial and packaging form design is subject to legal scrutiny when repeatedly associated with a single brand
Functional visual elements	Secondary meaning; non-functionality assessment	Courts acknowledge that functional features may attract protection where distinctiveness extends beyond utility	Functional necessity does not eliminate legal exposure in visual identity design
Comparative advertising visuals	Consumer deception; dilution of goodwill	Visual mimicry in advertising is evaluated for its capacity to mislead consumers irrespective of explicit claims	Advertising design must avoid perceptual equivalence, not merely textual misrepresentation

Source: Author's synthesis of Supreme Court and High Court decisions analysed in this study (1972–2017)

but that visual authorship increasingly operates within an implicit legal framework.

For designers and design educators, this synthesis clarifies why trade dress awareness cannot remain a post-facto legal concern delegated entirely to counsel. Judicial reasoning already treats designers' outputs as legal artefacts capable of generating proprietary rights and legal liability. In this sense, designers function as *de facto legal actors* within branding ecosystems, regardless of whether they possess formal legal training. The absence of legal literacy therefore does not remove legal responsibility; it merely renders design decision-making vulnerable, reactive, and ethically opaque. Embedding trade dress awareness within design pedagogy becomes not only a matter of professional prudence, but a necessary response to the way courts themselves now interpret visual identity in commercial contexts.

Table 1 synthesises judicial reasoning across key Indian FMCG trade dress decisions by mapping recurrent legal tests onto specific visual design variables, thereby translating doctrinal interpretation into concrete implications for design practice.

Taken together, the doctrinal analysis clarifies how Indian courts conceptualise trade dress as a source-identifying visual construct and the legal thresholds applied in infringement and passing-off disputes. The doctrinal analysis establishes the legal expectations that the empirical findings reveal designers are currently unprepared to meet. The following empirical study examines this gap by assessing designers' awareness of trade dress principles and their implications for professional practice.

Empirical Findings: Awareness and Application of IPR in Design Practice

To complement the case-based legal analysis, an empirical study was conducted through a structured online survey aimed at design students, educators, and practitioners in India. The survey explored the awareness, understanding, and real-world application of Intellectual Property Rights (IPR)—particularly trademark and trade dress—in academic and professional design settings (Table 2).

Participants were asked to rate their familiarity with key IPR domains on a 5-point Likert scale (Table 3).

While trademark and copyright awareness were high, trade dress remained poorlyunderstood, despite its critical relevance to branding, packaging, and product identity.Respondentswere asked how often they actively consider IPR and trade dress in classroom or professional projects (Table 4).

Only 30% of respondents ("Often" + "Always") appear to consider IPR on a regular basis in their projects, whether academic or professional. Conversely, 12% admit to never engaging with IPR concerns at all, exposing themselves or their clients to potential legal vulnerabilities.Inanother question the participants were asked to rate the importance of IPR

knowledge in design on a scale of 1 to 5 and 76% rated it as either "very important" or "extremely important". This is a noticeablecontradiction between high perceived importance (76%) and low implementation (30%)and clearly highlights the systemic educational and industry gaps.

The chi-square test was performed to assess if IPR application differs significantly across roles and since $p \approx 0.055$, the relationship is *marginally non-significant* at the 0.05 level but suggests a trend—educators and professionals are slightly more likely to apply IPR knowledge than students.

Qualitative Thematic Analysis (Open-Ended Responses)

Table 5 illustrates the outcomes obtained by looking at the open-ended answers to questions concerning obstacles, preparedness, and interest in learning about IPR.

Table 2 — Demographic distribution (n=100)

Role	Count	% of Total
Design Students	38	38%
Design Educators	24	24%
Practitioners	36	36%
Other	2	2%

Source: Author's survey of 100 respondents (2025)

Table 3— Familiarity with key IPR concepts (Average Rating out of 5)

Concept	Average Rating	% with 4 or 5
Trademark	4.2	82%
Trade Dress	3.1	36%
Copyright	4.4	85%
Design Registration	3.5	50%

Source: Author's survey of 100 respondents (2025)

Table 4 — Application of IPR knowledge in practice

Frequency	% of Respondents
Never	12%
Rarely	30%
Sometimes	28%
Often	18%
Always	12%

Source: Author's survey of 100 respondents (2025)

Discussion

The methodological integration in this study extends beyond isolated legal interpretation, foregrounding the dynamic interplay between doctrine and practice. Significantly, the objective is not to empirically validate judicial reasoning but to illuminate points of convergence and divergence between legal expectations and design practice.

Judicial Interpretation of Trade Dress as Visual Communication

Trade dress is increasingly interpreted as a form of visual communication rather than a collection of aesthetic features. Courts apply perception-based tests—overall impression, likelihood of confusion, and imperfect recollection—emphasising how visual configurations shape consumer cognition. This reasoning parallels communication design principles such as gestalt perception, visual hierarchy, and associative meaning.Courtshave also extended protection to non-traditional elements, including colour schemes, packaging layouts, and three-dimensional forms, marking a doctrinal shift significant for designers. The recent decisions reveal greater sensitivity to the semiotic role of visual form. Yet recognition is not automatic; it depends on acquired distinctiveness and market association. The emerging stance is conditional and context-dependent, signalling an evolving but unsettled jurisprudence.

Designer Awareness and Professional Practice

The survey shows that designers are aware of branding consistency, differentiation, and market positioning, but their understanding about trade dress law is uneven. Most of the design decisions involving colour palettes, packaging layouts, and typography fall strictly into the aesthetic or strategic dimensions of a branding campaign and are not considered legally relevant for protection or infringement. This is not indicative of any negligence on the part of designers; however, it highlights a structural gap between education in design and legal knowledge because intellectual property law is not covered adequately in design education. Reliance on client briefs, brand guidelines, and post-hoc legal vetting furthers this reactive stance. Hence, legal vulnerability in FMCG branding arises not so much from intent to imitate as from unawareness of judicial interpretation.

Bridging Doctrinal Expectations and Empirical Practice

Doctrinal and empirical findings reveal a misalignment: courts increasingly treat designers' outputs as legally operative artefacts, while designers approach them through aesthetic, functional, and commercial frames. This divergence reflects distinct institutional logics—courts emphasise consumer perception and market effects, whereas designers prioritise creativity, usability, and brand expression. The study identifies this gap as a site of professional

Table 5 — Thematic codes and example responses

Theme	Description	Example Quote
Lack of Curriculum Integration	IPR not taught systematically in classrooms	"We never discussed trademark law in any design studio course."
Misconception of Roles	Belief that legal issues are the client's responsibility	"Legal is not a designer's job—we just make what the client wants."
Time and Budget Constraints	Pressure to deliver quickly overrides compliance concerns	"No one checks legal risks when deadlines are so tight."
Educator Unpreparedness	Faculty lack legal training or awareness themselves	"Even teachers don't talk about trade dress in branding classes."
Desire for Structured Learning	Participants asked for modules, workshops, and certification paths	"An online course on design and IPR would help us a lot."

Source: Author's survey of 100 respondents (2025)

risk, positioning designers as participants in the legal construction of brand identity despite lacking formal legal training. Trade dress awareness thus becomes vital not only for compliance but also for ethical authorship and informed decision-making, enabling anticipation of legal interpretation beyond design practice.

Implications for Design Education and Interdisciplinary Research

The findings highlight key implications for design education and interdisciplinary research. Pedagogically, incorporating trade dress principles into communication design curricula—especially branding and packaging—can foster reflective practice while preserving creative freedom. Introducing perception-based legal reasoning equips designers to anticipate how visual choices may be interpreted beyond aesthetics. From a research perspective, combining doctrinal analysis with empirical inquiry demonstrates how law functions outside formal judgments. The study's scope remains limited, offering interpretive tendencies and exploratory insights rather than generalisable conclusions. Future work could include consumer perception experiments, longitudinal studies, or comparative analyses, enriching understanding of how law, design, and markets co-evolve.

Conclusion

The study explored selective trademarks and passing-off disputes in the FMCG sector to understand how courts interpret trade dress and visual identity. Rather than establishing a uniform jurisprudence, the analysis identified interpretive tendencies within the Supreme Court and leading High Courts, which have historically shaped doctrinal development in this domain. Courts consistently adopted perception-based tests, privileging overall impression and consumer recollection, and extended protection to non-traditional elements such as colour schemes, packaging layouts, and three-dimensional forms when they functioned as indicators of origin. Importantly, these determinations were grounded in consumer perception rather than designers' creative intent. For design practice, this signals that routine visual decisions can acquire legal significance once they enter the marketplace, positioning design outputs as legally consequential artefacts capable of generating proprietary claims and liability.Awarenessof trade dress principles thus becomes integral to responsible design authorship. However, recognition remains contingent on distinctiveness and market association, making protection conditional and context dependent. The findings highlight the growing intersection of design literacy and legal literacy. The study contributes to intellectual property scholarshipby showing how judicial reasoning intersects with visual communication and calls for deeper engagement by designers, educators, and branding professionals. Future research should expand through empirical and comparative approaches.

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