

## IP Case Law Development

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The Paper identifies and analyzes the decisions of the Supreme Court of India (*hereinafter*, the Supreme Court) relating to intellectual property (IP) reported<sup>1</sup> in the year 2025. This Paper seeks to answer the following questions: (i) how the Supreme Court interpreted-constructed the text of the IP statutes through her law declaring power under Article 141 of the Constitution of India; (ii) what has been the approach of the Supreme Court in deciding these cases in the year 2025; and (iii) whether or not the Supreme Court has contributed to the development of IP jurisprudence in the year 2025 through these decisions.

**Keywords:** Supreme Court of India, Constitution of India, Law Declared, Article 141, Intellectual Property Statutes, Intellectual Property Decisions, Principles of IP Law, Interpretation-Construction, IP Jurisprudence, Common Law, *State Decisis*, Bench, 2025, Judicial Ratiocination, Approach, Development, JUDIS, SCR, SCC OnLine

This Paper is in continuation to the paper '*IP Case Law Development*'<sup>2</sup> (*hereinafter*, Last Paper) published in the *Journal of Intellectual Property Rights* (*hereinafter*, JIPR) which covered all the intellectual property decisions of the Supreme Court of India (*hereinafter*, the Supreme Court) from the year 2024. Paper proceeds with the same arguments and methods as developed and used in the Last Paper published under the series '*IP Case Law Development*'.

As per the constitutional scheme, only the Supreme Court has the power to '*declare law*'<sup>3</sup> by virtue of Article 141 of the Constitution of India (*hereinafter*, the Constitution) and in exercise of this power, the Supreme Court makes and unmakes law. The Supreme Court when it decides a *lis* between the parties, not only decides it by answering the question(s) before her but also iron out the creases of law through interpretation-construction<sup>4</sup> by reading, reading down, or reading up the text of the statutes. The statutory text is both abstract and opaque by nature. The Supreme Court through law declaring power helps law secrete through the interstices of statutory text and makes abstract text concrete and opaque text transparent in the light of the facts of a particular case.

The Supreme Court decides three types of questions: (i) questions of facts, (ii) questions of law, and (iii) mixed questions of facts and law. In intellectual property (*hereinafter*, IP) cases, the

Supreme Court generally deals with the categories (ii) and (iii) questions, and not category (i) questions for the reason that it does not have Original Jurisdiction in IP cases. The reason why it deals only with the above mentioned two categories of questions is that all IP infringements are mixed questions of facts and law.<sup>5</sup> Any questions of infringement under any IP statute or common law are not pure questions of law. The IP cases generally reach the Supreme Court when special leave to appeal is granted by the Supreme Court under Article 136 of the Constitution, and on rare occasions under her Appellate Jurisdiction under article 134-A read with either article 132 or article 133 or article 134. Therefore, the Supreme Court deals only with mixed questions of facts and law in IP cases; but it does not mean that the powers vested in the Supreme Court under Articles 142 of the Constitution '*to do complete justice*' and the writ jurisdiction under article 32 of the Constitution cannot be invoked in IP cases—though these powers have not been used in IP cases till date.

A total of six (6) decisions is reported from the year 2025. Out of these six (6) decisions, the names of IP statutes find a reference in the text of four (4) decisions,<sup>6</sup> leaving only two (2) direct decisions on IP statutes (See Table 1). These two decisions are on the Copyright Act, 1957<sup>7</sup> and the Designs Act, 2000;<sup>8</sup> and the Trade Marks Act, 1999.<sup>9</sup> No decision of the Supreme Court is reported on the other four IP

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Table 1 — Reportable IP Decisions (2025)

| S. No.                                                                                     | Name of Judgment                                                                               | Date of Judgment | Bench    | Coram *                                            | Concurring Opinion | Dissenting Opinion | Whether Court declared principle of IP law? | Whether interpreted-constructed? | Unanimous Judgment/Order? |
|--------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|------------------|----------|----------------------------------------------------|--------------------|--------------------|---------------------------------------------|----------------------------------|---------------------------|
| <b>The Copyright Act, 1957 [Act 14 of 1957] and the Designs Act, 2000 [Act 16 of 2000]</b> |                                                                                                |                  |          |                                                    |                    |                    |                                             |                                  |                           |
| 1                                                                                          | <i>Cryogas Equipment Private Limited v Inox India Limited</i> , 2025 SCC OnLine SC 780         | 15 April 2025    | Division | <b>Surya Kant</b> and N Kotiswar Singh, <i>JJ.</i> | No                 | No                 | Yes                                         | Yes                              | Yes                       |
| <b>The Trade Marks Act, 1999 [Act 47 of 1999]</b>                                          |                                                                                                |                  |          |                                                    |                    |                    |                                             |                                  |                           |
| 2                                                                                          | <i>Pernod Ricard India Private Limited v Karanveer Singh Chhabra</i> , 2025 SCC OnLine SC 1701 | 14 August 2025   | Division | J B Pardiwala and <b>R Mahadevan</b> , <i>JJ.</i>  | No                 | No                 | Yes                                         | Yes                              | Yes                       |

\*Name of the judge in **bold** refers to the judge who delivered the judgment on behalf of the Court.

statutes, namely: (i) The Patents Act, 1970,<sup>10</sup> (ii) The Geographical Indications of Goods (Registration and Protection) Act, 1999,<sup>11</sup> (iii) The Semiconductor Integrated Circuits Layout-Design Act, 2000,<sup>12</sup> and (iv) The Protection of Plant Varieties and Farmers' Rights Act, 2001.<sup>13</sup> The first direct decisions reported from 2025 is on the interface between Copyright Act, 1957 and the Designs Act, 2000; and the second decision is on the grant of interim injunction by the courts incases under the Trade Marks Act, 1999.

The Supreme Court has decided only two (2) IP cases in the whole year (365 days; exact 354 working days excluding the Christmas and New Year Holidays from 21 November 2025 to 1 January 2026). Both the direct decisions are the unanimous Division Bench decisions. A total of four judges were on the bench in these two decisions: Justices Surya Kant, N Kotiswar Singh, J B Pardiwala, and R Mahadevan. Justices Surya Kant and R Mahadevan authored one judgment each on behalf of the Bench. No Dissenting or separate but concurring judgment is reported. Also, no Chief Justice of India was on the Bench in these two cases.

### **‘Copyright’ under the Copyright Act, 1957 and the Designs Act, 2000**

The first decision on the Copyright Act, 1957 (*hereinafter*, the Copyright Act) and the Designs Act, 2000 (*hereinafter*, the Designs Act) reported from the year 2025 is *Cryogas Equipment Private Limited v Inox India Limited*,<sup>14</sup> by a Division Bench. This case is on the intersecion between Copyright Act and the Designs Act. The case landed in the Supreme Court as a Special Leave to Appeal granted by the Supreme

Court from a common judgment delivered by the High Court of Gujarat at Ahmedabad. Justice Surya Kant penned down the unanimous judgment on behalf of the Court. The following two issues were for consideration before the Supreme Court in this case:

(i) ‘What are the parameters for determining whether a work or an article falls within the limitation set out in Section 15 (2) of the Copyright Act, thereby classifying it as a “design” under Section 2 (d) of the Designs Act?’ (*hereinafter*, the First Question); and

(ii) ‘Whether the High Court erred in setting aside the order of the Commercial Court and thus rejecting the application under Order VII Rule 11 of the Code of Civil Procedure, 1908?’<sup>15</sup> (*hereinafter*, the Second Question)

Before answering the First Question, the Supreme Court clarified the ‘limit’ that the discussion will be ‘limited to determining the distinction between a “design” under the Designs Act and an “artistic work” that might warrant copyright protection’.<sup>16</sup> The Supreme Court adopted incremental and a two-pronged approach to answer the questions: (i) it examined the existing Indian statutory intellectual property (IP) scheme, and (ii) evaluated the criteria considered and tests adopted in various jurisdictions, to ascertain ‘whether an article ought to be conferred protection under the Copyright Act or the Designs Act within the confines of Section 15 (2) of the Copyright Act.’

Referring to the statutory scheme, particularly Section 14 of the Copyright Act, the Court observed that ‘*It espouses the protection of works in terms of: (i) literary, dramatic or musical work, not being a*

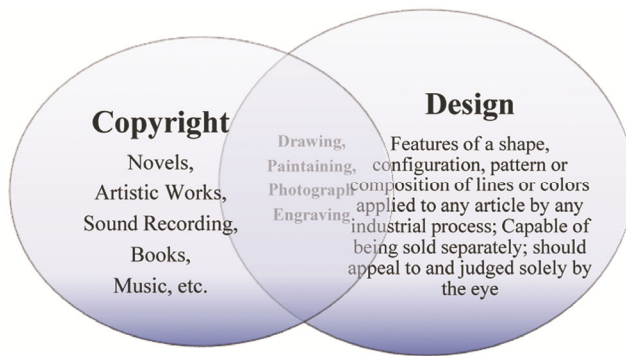


Fig. 1 — Artistic works–design intersection

computer programme; (ii) a computer programme; (iii) an artistic work; (iv) a cinematograph film; and (v) a sound recording.<sup>17</sup> By referring to Section 2 (d) of the Designs Act, the Court observed that it '[s]eeks to minimise overlap with the Copyright Act by defining the term 'design'. . . This aspect of IP thus focuses on the utility of work, as well as its visual appeal and aesthetic, making it an important factor in determining consumer preference or commercial viability.'<sup>18</sup> (Emphasis added)

Section 2(d) of the Design Act expressly bars the inclusion of 'artistic works' encapsulated under Section 2 (c) of the Copyright Act. The Court highlighted the point of intersection when a 'design' shares commonalities with 'artistic works' such as paintings or drawings, that may be accorded copyright protection, and illustrated through a Venn Diagram Fig. 1 (an illustrative image and is not exhaustive in nature):

Section 15 (1) of the Copyright Act explicitly states that a copyright shall not subsist in a 'design' protected under the Designs Act. A design when once registered, any copyright protection ceases to exist. Section 15 (2) of the Copyright Act clarifies that 'any design which is capable of being registered under the Designs Act, if not registered, then the copyright protection in such design would terminate once that design is applied to any article and reproduced in excess of 50 times by an industrial process, either by the owner or a licensee.'<sup>19</sup> There seems to be an inherent overlap as there can be some designs that could be entitled to copyright protection and there can be certain artistic works which lose their copyright protection when industrially applied. This perplexity is further augmented on account of there being an express interdiction on designs from seeking any long-term copyright protection.

The Court discussed in detail two approaches adopted by the Indian High Courts in deciding this

issue: (i) *Interpretation of Section 15 (2) of the Copyright Act*; and (ii) *Functional Utility of the Article*. The former involves pulling back the curtains on the overlaps or intersections between the two Statutes and ascertaining whether an article would qualify protection under the Copyright Act for being an 'original artistic work' or whether it would earn protection under the Designs Act. Whereas, in the latter, this requires an assessment as to whether the article serves a functional purpose beyond mere artistic expression. If the primary characteristic of the work is its functional utility rather than aesthetic appeal, it would not qualify to seek protection under the Designs Act.

The Court finally clarified this overlap and observed that the '[e]xpression 'artistic work' under Section 2(c) of the Copyright Act has a very wide connotation and may also include abstract work(s) comprising a few lines or curves arbitrarily drawn, which could be either two or three-dimensional. It may be clarified that such a work may or may not have any visual appeal. Further, the holder of such an artistic work is entitled to draw protection under Section 14(c) of the Copyright Act, including the exclusive right to reproduce such work in any material form. Such a reproduction may also involve depicting a three-dimension work of a two-dimensional work or vice versa.'<sup>20</sup> However, if such reproduction is done by employing an industrial process, which may be manual, mechanical or chemical, and which results in a finished article that may appeal to the eye, then 'the features of shape, configuration, pattern, ornament or composition of lines or colours applied to the article by such an industrial process', constitutes 'design' within the meaning of Section 2(d) of the Designs Act.'<sup>21</sup> (Emphasis added)

The Court discussed the legislative intent in the following words:

'[T]he intent of producing an original artistic work is not determinative of its protection under the Copyright or Designs Regime. Rather, the legislative intent is to harmonise the two Statutes so that while an 'artistic work' qualifies for copyright protection, its commercial or industrial application—i.e., the 'design' derived from the original work for industrial production — is subject to the limitations set out in Section 15(2) of the Copyright Act. Such a design gets protected only if it is registered under the Designs Act.'<sup>22</sup> . . .

‘[T]he original artistic work, which initially enjoys copyright protection, does not lose the same merely because a “design” derived from it has been industrially applied to create a product. While the expression “artistic work” has a broad spectrum, “design” is restricted to specific features such as shape, configuration, pattern, ornamentation, or composition of lines or colours, applied to an article through an industrial process, resulting in a finished product that appeals to the eye. These visually appealing features, when applied industrially, define a “design” under the Designs Act.’<sup>23</sup> (*Emphasis added*)

Court further observed that ‘[i]nquiry cannot be concluded merely by assuming that what does not qualify as an “artistic work”, within the meaning of the Copyright Act, would automatically receive protection under the Designs Act. While protection under the Designs Act is not as enduring as that under the Copyright Act, it is not granted by default and requires specific criteria to be met. In this regard, courts in India and globally consistently apply the “test of functional utility” to determine whether a work qualifies for protection under the Designs Act.’<sup>24</sup>

The Supreme Court formulated a *two-pronged approach* in order to crack open the conundrum caused by Section 15 (2) of the Copyright Act so as to ascertain whether a work is qualified to be protected by the Designs Act:<sup>25</sup>

(i) ‘Whether the work in question is purely an “artistic work” entitled to protection under the Copyright Act or whether it is a “design” derived from such original artistic work and subjected to an industrial process based upon the language in Section 15 (2) of the Copyright Act; and

(ii) If such a work does not qualify for copyright protection, then the test of “functional utility” will have to be applied so as to determine its dominant purpose, and then ascertain whether it would qualify for design protection under the Design Act.’<sup>26</sup>

Supreme Court also highlighted that the ‘[C]ourts while applying this test, *ought to undertake a case-specific inquiry guided by statutory provisions, judicial precedents, and comparative jurisprudence. It must be kept in mind that the overarching objective is to ensure that rights granted under either regime serve their intended purpose without unduly encroaching upon the domain of the other. With this approach, we have attempted to clarify the treatment*

*of works at the intersection of “copyright” and “design” law(s), thereby ensuring coherence and consistency in the application of IP rights in India.*’<sup>27</sup>

The Supreme Court answered the Second Question as follows:

‘[T]he question as to whether the original artistic work would fall within the meaning of ‘design’ under the Designs Act cannot be answered while deciding an application under Order VII Rule 11 of the Code of Civil Procedure, 1908. This stage would involve only a *prima facie* inquiry as to the disclosure of cause of action in the plaint. The question pertaining to ascertaining the true nature of the “Proprietary Engineering Drawings” involves a mixed question of law and fact and could not have been decided by the Commercial Court at a preliminary stage based upon such a casual appraisal of the plaint averments.’<sup>28</sup>

In addition to the answers to the above questions and principles declared by the Supreme Court, two more principles of IP law may be culled out from the decision:

- (i) ‘IP rights are fundamentally aimed at excluding or preventing others from possessing, using, or alienating the protected IP, thereby enabling the owner to benefit from the product of their intellect.’<sup>29</sup>
- (ii) ‘Copyright is a statutory and negative right, preventing unauthorised copying of copyrighted material.’<sup>30</sup>

### **The Trade Marks Act, 1999 [Act 47 of 1999]**

*Pernod Ricard India Private Limited v Karanveer Singh Chhabra*,<sup>31</sup> is a Division Bench decision of the Supreme Court. Justice R Mahadevan delivered the unanimous judgment on behalf of the Court. This case landed in the Supreme Court as a Civil Appeal arising out of Special Leave to Appeal granted by the Supreme Court against the judgment of the High Court of Madhya Pradesh.

The question for consideration before the Supreme Court in this case was: ‘Whether the appellants are entitled to the grant of an interim injunction restraining the respondent from using the impugned trademark, get-up, and trade dress—including the packaging—of ‘LONDON PRIDE’ on the ground that such use amounts to infringement and/or imitation of the appellants’ registered trademarks, namely, ‘BLENDERS PRIDE’, ‘IMPERIAL BLUE’, and ‘SEAGRAM’S’.

The Supreme Court by applying the settled legal standards including the *anti-dissection rule*, the

overall similarity test, and the perspective of an average consumer, did not prima facie find deceptive similarity between the competing marks that would give rise to confusion.<sup>32</sup> Accordingly, the Civil Appeal filed alleging trademark infringement by whiskey branch 'London Pride' against 'Blenders Pride' was dismissed by the Court. But the Supreme Court laid down *multiple interrelated factors* to be considered by the court in granting of an interim injunction.

The Supreme Court observed that the 'Trade Marks Act, 1999 does not prescribe any rigid or exhaustive criteria for determining whether a mark is likely to deceive or cause confusion. *Each case must necessarily be decided on its own facts and circumstances, with judicial precedents serving to illuminate the applicable tests and guiding principles rather than to dictate outcomes.*'<sup>33</sup> 'The grant of injunction—whether for infringement or passing off—is ultimately governed by equitable principles and is subject to the general framework applicable to proprietary rights. Where actual infringement is established, that alone may justify injunctive relief; a plaintiff is not expected to wait for further acts of defiance. As judicially observed, "the life of a trademark depends upon the promptitude with which it is vindicated".'<sup>34</sup>

The Supreme Court referred to the principles laid down in *American Cyanamid Co v Ethicon Ltd*<sup>35</sup> which continue to guide the courts while determining interim injunction applications in trademark cases. The Court held that the '[f]ollowing criteria are generally applied:

(i) *Serious question to be tried/triable issue*: The plaintiff must show a genuine and substantial question fit for trial. It is not necessary to establish a likelihood of success at this stage, but the claim must be more than frivolous, vexatious or speculative.

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

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

(iv) *Irreparable harm*: Where the use of the impugned mark by the defendant may lead to dilution

of the plaintiff's brand identity, loss of consumer goodwill, or deception of the public - harms which are inherently difficult to quantify—the remedy of damages may be inadequate. In such cases, irreparable harm is presumed.

(v) *Public interest*: In matters involving public health, safety, or widely consumed goods, courts may consider whether the public interest warrants injunctive relief to prevent confusion or deception in the marketplace.<sup>36</sup>

In light of the above principles laid down in *American Cyanamid Co*,<sup>35</sup> the Supreme Court added one more factor (making it to a total six factors) and declared that the 'grant of an interim injunction in trademark matters requires the court to consider multiple interrelated factors: *prima facie case, likelihood of confusion, relative merits of the parties' claims, balance of convenience, risk of irreparable harm, and the public interest. These considerations operate cumulatively, and the absence of any one of these may be sufficient to decline interim relief.*'<sup>37</sup> (Emphasis added)

In addition to the multiple interrelated factors laid down by the Supreme Court, following principles of trade mark law may be culled out from the decision:

(i) 'Trademarks are central to the identity, survival, and growth of any business operating in a competitive commercial environment. They enable enterprises to establish consumer trust and preserve the goodwill built over time through substantial investments in quality, service, and brand visibility.'<sup>38</sup>

(ii) 'For consumers, trademarks serve as indicators of the source and consistent quality of goods or services across different providers, thereby enabling them to make informed choices, which may, at a minimum, affect taste and preference, and at a maximum, impact their health and well-being. It is, therefore, imperative that intellectual property rights are robustly protected against infringing entities that seek to unfairly capitalize on another's goodwill, to the detriment of both the rightful owner and the end consumer.'<sup>39</sup>

(iii) 'At the heart of trademark law lies the foundational principle that there must be no likelihood of confusion in the mind of the average consumer.'<sup>40</sup>

(iv) 'In cases involving composite marks, it is not necessary that the impugned mark replicate the original in its entirety; even partial imitation may amount to infringement or passing off if it evokes an

association with the registered or prior-used mark in the consumer's mind.<sup>40</sup> 'However, the application of this principle is nuanced. Courts are not expected to adopt a mechanical, side-by-side comparison of the marks. Rather, judicial scrutiny is guided by interpretative doctrines such as the anti-dissection rule and the doctrine of the dominant mark, *inter alia*, other well-established tests. Although these principles are frequently applied in tandem, they do not always align perfectly, and courts have differed in their application depending on the specific facts and context of each case.'<sup>41</sup>

- (v) '*The likelihood of confusion remains the cornerstone of both infringement and passing off actions.*'<sup>42</sup>
- (vi) 'Whether a trade mark is likely to deceive or cause confusion is a *question of fact*. . . [T]he broad and essential features of the rival marks must be considered. The assessment focuses on visual appearance, phonetic similarity, the nature of the goods, the class of purchasers, and the manner of sale.'<sup>43</sup>
- (vii) '[P]roof of an intention to deceive is not required; a likelihood of confusion is sufficient to establish infringement or passing off. The evaluation must be made from the standpoint of an average consumer with imperfect recollection, emphasizing the overall commercial impression rather than engaging in a minute or mechanical comparison.'<sup>44</sup>
- (viii) 'In the case of composite marks—those contained multiple elements, such as words and logos—the overall impression created by the mark is relevant. However, proprietors cannot claim exclusive rights over individual components, particularly, non-distinctive or descriptive elements. Courts have often required disclaimers of such generic parts at the time of registration.'<sup>45</sup>
- (ix) 'Where colours are applied to packaging or labels, *the burden of proving acquired distinctiveness is higher*. In such cases, *the proprietor must show that the colour scheme functions as a badge of origin*. . . [T]rademark law seeks to protect indicators of source—both inherently and through acquired distinctiveness—which were previously protectable only through the more demanding process of a passing off action.'<sup>46</sup>
- (x) 'Trade dress, encompassing the overall visual appearance of a product—including packaging, layout, colour schemes, and graphics—also enjoys protection. . . '<sup>47</sup>
- (xi) 'A foundational principle in trademark law is that marks must be compared as a whole, and not by dissecting them into individual components. This is known as the *anti-dissection rule*, which reflects the real-world manner in which consumers perceive trademarks based on their overall impression, encompassing appearance, sound, structure, and commercial impression.'<sup>48</sup>
- (xii) '[C]orrect test for trademark infringement is *whether, when considered in its entirety, the defendant's mark is deceptively similar to the plaintiff's registered mark*. The Court expressly cautioned against isolating individual parts of a composite mark, as such an approach disregard how consumers actually experience and recall trademarks.'<sup>49</sup> [Referring to *Kaviraj Pandit Durga Dutt Sharma v Navratna Pharmaceuticals Laboratories*]<sup>50</sup>
- (xiii) 'While Section 17 of the Trade Marks Act, 1999 restricts exclusive rights to the trademark as a whole and does not confer protection over individual, non-distinctive components *per se*, courts may still identify dominant or essential features within a composite mark to assess the likelihood of confusion. However, this does not permit treating such features in isolation; rather, they must be evaluated in the context of the overall commercial impression created by the mark.'<sup>51</sup>
- (xiv) '[I]n disputes involving composite marks, the mere presence of a shared or generic word in both marks does not, by itself, justify a finding of deceptive similarity. Courts must undertake a holistic comparison examining visual, phonetic, structural, and conceptual elements, to assess whether the overall impression created by the rival marks is likely to mislead an average consumer of ordinary intelligence and imperfect memory. If the marks, viewed in totality, convey distinct identities, the use of a common element—particularly if it is descriptive or laudatory—will not by itself amount to infringement.'<sup>52</sup>
- (xv) 'In determining whether a mark is deceptively similar to another, courts often consider the *dominant feature*[test] of the mark—that is, the element which is most distinctive, memorable, and likely to influence consumer perception. While the *anti-dissection rule* requires marks to be compared in their entirety, courts may still place emphasis on certain prominent or distinguishing elements, especially where such

features significantly contribute to the overall commercial impression of the mark.’<sup>53</sup>

- (xvi) ‘The principles of the anti-dissection rule and the dominant feature test, . . . are not mutually exclusive. Identifying a dominant feature can serve as an analytical aid in the holistic comparison of marks. In certain cases, an infringing component may overshadow the remainder of the mark to such an extent that confusion or deception becomes virtually inevitable. In such instances, courts—while maintaining a contextual and fact-specific inquiry—may justifiably assign greater weight to the dominant element. However, emphasis on a dominant feature alone cannot be determinative; the ultimate test remains whether the mark, viewed as a whole, creates a deceptive similarity likely to mislead an average consumer of ordinary intelligence and imperfect recollection.’<sup>54</sup>
- (xvii) ‘An analogy that aptly illustrates the significance of a dominant element in a composite mark is that of mixing milk and water. If a small quantity of milk is added to a half-glass of water, the mixture becomes cloudy—the change is perceptible, but the dominant character remains watery. Conversely, if the same amount of water is added to a half-glass of milk, the result still appears to be milk—the dilution is imperceptible. Though the components are the same, the perceptual impact differs, depending on which element dominates. Similarly, in trademark analysis, the presence of common elements across marks does not automatically indicate a likelihood of confusion. What matters is the relative prominence and distinctiveness of the elements. Just as the milk in the second example visually and qualitatively overwhelms the water, a dominant feature in a mark can subsume other components and shape consumer perception. Therefore, while assessing deceptive similarity, due weight must be given to the dominant element, without disregarding the composite nature of the mark.’<sup>55</sup> (*Emphasis added*)
- (xviii) ‘The dominant feature of a mark is typically identified based on factors such as its visual and phonetic prominence, placement within the mark (with initial components often carrying greater perceptual weight), inherent distinctiveness, and the degree of consumer association it has generated.’<sup>56</sup>
- (xix) ‘It is a well-established principle of trademark law that *generic, descriptive, or laudatory terms*—

particularly those commonly used in a given trade—*cannot be monopolized by any one proprietor*. Even where such terms form part of a registered trademark, protection does not extend to those elements per se unless it is affirmatively shown that they have acquired secondary meaning —*i.e.*, that the term has come to be exclusively and distinctively associated with the plaintiff’s goods in the perception of the consuming public.’<sup>57</sup>

- (xx) ‘The average consumer test is a central standard in trademark and unfair competition law. It assesses whether there exists a likelihood of confusion between two marks, or whether a mark lacks distinctiveness or is merely descriptive. The test is grounded in the perception of the average consumer—a person who is reasonably well-informed, observant, and circumspect, but not an expert or overly analytical.’<sup>58</sup> . . . ‘A key feature of this test is the recognition that consumers rarely recall trademarks with perfect accuracy.’<sup>59</sup>  
[*Average Consumer Test*]
- (xxi) ‘The test is equally relevant to both inherent and acquired distinctiveness. A mark has inherent distinctiveness if, by its very form and appearance, it identifies trade origin to the average consumer at the time of registration. A mark may acquire distinctiveness if, through consistent and prolonged use, it becomes associated by a significant portion of the relevant public with a particular commercial source — even if the consumer cannot name the source precisely. What matters is not that the consumer knows the producer, but that the mark serves as an indicator of origin.’<sup>60</sup> . . . ‘However, the test has limitations. In cases involving product shapes or designs, where the features serve a technical function or add substantial value, policy considerations may override consumer perception. While the average consumer may identify the essential characteristics of a product’s shape or configuration, their opinion is not determinative in assessing registrability, especially where legal prohibitions against functional or aesthetic monopolies come into play.’<sup>61</sup>
- (xxii) ‘The *doctrine of imperfect recollection*, closely linked to the average consumer test, emphasizes the importance of first impression. Courts have cautioned against overly technical or granular comparisons of trademarks.’<sup>62</sup>
- (xxiii) ‘The foundational test for assessing deceptive similarity remains the *Pianotist Test*, as laid down in *Pianotist Co. Ltd’s Application*<sup>63</sup> by Justice Parker. . . which requires consideration of the visual and phonetic similarity of the marks, the nature of the

goods, the class of consumers, and all surrounding circumstances. Justice Parker framed the test as follows: “*You must take the two words. You must judge of them, both by their look and by their sound. You must consider the goods to which they are applied, the nature and kind of customer who would be likely to buy the goods, and all the surrounding circumstances. You must further consider what is likely to happen if each of these trademarks is used in a normal way for the respective goods. If, considering all these circumstances, you come to the conclusion that there will be confusion—not necessarily that one trader will be passed off as another—but that there will be confusion in the mind of the public leading to confusion in the goods, then registration must be refused*”.<sup>64</sup>

(xxiv) ‘As a general rule, a proprietor whose statutory or common law rights are infringed is entitled to seek an injunction to restrain further unlawful use. However, this remedy is not absolute. The considerations governing the grant of injunctions in trademark infringement actions broadly apply to passing off claims as well. That said, a fundamental distinction remains: while a registered proprietor may, upon proving infringement, seek to restrain all use of the infringing mark, a passing off action does not by itself confer an exclusive right. In appropriate cases, the court may mould relief in passing off so as to permit continued use by the defendant, provided it does not result in misrepresentation or deception.’<sup>65</sup>

(xxv) ‘The grant of injunction—whether for infringement or passing off—is ultimately governed by equitable principles and is subject to the general framework applicable to proprietary rights. Where actual infringement is established, that alone may justify injunctive relief; a plaintiff is not expected to wait for further acts of defiance. As judicially observed, “*the life of a trademark depends upon the promptitude with which it is vindicated*”.’<sup>66</sup>

(xxvi) ‘It is a settled principle of trademark law that deceptive similarity does not necessitate exact imitation. What is material is the likelihood of confusion or association in the minds of consumers arising from an overall resemblance between the competing marks. The applicable standard is that of an average consumer with imperfect recollection.’<sup>67</sup>

(xxvii) ‘While comparing rival marks, Courts must assess the marks in their entirety, rather than

dissecting composite trademarks into isolated components. The dominant feature of a mark may assist in crossing the preliminary threshold of analysis, but the ultimate inquiry must focus on the overall impression created by the mark — especially in the context of the relevant goods, trade channels, and target consumers. The proper test is not to place the two marks side by side to identify dissimilarities, but to determine whether the impugned mark, when viewed independently, is likely to create an impression of association or common origin in the mind of the average consumer. Even if a particular component of a mark lacks inherent distinctiveness, its imitation may still amount to infringement if it constitutes an essential and distinctive feature of the composite mark as a whole.’<sup>68</sup>

(xxviii) ‘In a market segment, where consumers are more discerning, the likelihood of confusion is negligible.’<sup>69</sup>

## Conclusion

Unlike the year 2024,<sup>2</sup> the Supreme Court in 2025 interpreted-constructed the text of the IP statutes to make abstract text concrete and opaque text transparent. Excluding the time of Christmas and New Year Holidays<sup>70</sup> in the year 2025, the Supreme Court decided one IP case in 177 days or one IP case in 484 (point four eight four) year. Though only two IP cases<sup>71</sup> landed in the Supreme Court—one through special leave to appeal<sup>14</sup> and another as a civil appeal<sup>31</sup>—but the Supreme Court did not leave any issue unanswered and tried to iron out the creases of law by reading, reading down, or reading up the text of the statutes. Supreme Court resolved the conundrum caused by Section 15 (2) of the Copyright Act by formulating a two-pronged approach to ascertain whether a work is qualified to be protected by the Designs Act. Further, in the trade mark cases, the Supreme Court laid down six interrelated factors required by the courts to consider while granting of an interim injunction.

The approach of the Supreme Court seems consistent and constructive. It is consistent for its approach of adhering to the precedent—as a norm. It has also been constructive for the above-mentioned reasons—formulating tests and laying down factors to be followed by the courts in deciding the IP issues—which may further be considered as a reason to safely conclude that the IP jurisprudence as evolved by the Supreme Court was developed and expanded in this year. Unlike the year 2024, where the IP

jurisprudence as evolved by the Supreme Court did not grow and remained what it was in 2023,<sup>72</sup> the year 2025 has been different for the Supreme Court because of her contributions to the development of IP jurisprudence through judicial ratiocination.

## References

- 1 Reportable decisions of the Supreme Court of India have been taken from JUDIS, SCR, and SCC OnLine.
- 2 Raza A, Alam G & Oriakhogba D, IP Case Law Development, *Journal of Intellectual Property Rights*, 30 (5) (2025) 603.
- 3 For detailed discussion on ‘intended’ and ‘interpreted-constructed’ meanings of “law declared” see: Raza A and Alam G, Patent Law Declared by the Supreme Court of India, *Journal of Intellectual Property Rights*, 28 (1) (2023) 46–67.
- 4 See Solum L B, The Interpretation-Construction Distinction, *Constitutional Commentary*, 27 (2010) 95–218.
- 5 *University of Oxford v Rameshwari Photocopy Services*, 2016 SCC OnLine Del 5128 and *Monsanto Technology LLC v Nuziveedu Seeds Ltd*, (2019) 3 SCC 381.
- 6 *I K Merchants Pvt Ltd v State of Rajasthan*, 2025 SCC OnLine SC 692 [J B Pardiwala and R Mahadevan, JJ.] [The expression ‘copyright’ referred in the text of the judgment]; *Balaji Traders v State of U P*, 2025 SCC OnLine SC 1314 [Sanjay Karol and Manoj Misra, JJ.] [The expressions ‘trademark’ and ‘copyright’ has been referred once each in the text of the judgment]; *Asian Paints Limited v Ram Babu*, 2025 SCC OnLine SC 1427 [Ahsanuddin Amanullah and Prashant Kumar Mishra, JJ.] [The expression ‘copyright’ has been referred 12 times and ‘trademark’ 5 times in the text of the judgment]; *K Mangayarkarasi v N J Sundaresan*, 2025 SCC OnLine SC 1104 [J B Pardiwala and R Mahadevan, JJ.] [expression ‘trademark’ has been used several times in the text of the judgment]. Name of the judge in **bold** refers to the judge who delivered the judgment on behalf of the Court.
- 7 Act 14 of 1957.
- 8 Act 16 of 2000.
- 9 Act 47 of 1999.
- 10 Act 39 of 1970.
- 11 Act 48 of 1999.
- 12 Act 37 of 2000.
- 13 Act 53 of 2001.
- 14 *Cryogas Equipment Private Limited v Inox India Limited* 2025 SCC OnLine SC 780.
- 15 Act 5 of 1908.
- 16 *Cryogas Equipment Private Limited v Inox India Limited* 2025 SCC OnLine SC 780, Para 8.
- 17 Para 11.
- 18 Para 12.
- 19 Para 16.
- 20 Para 55.
- 21 Para 56.
- 22 Para 57.
- 23 Para 58.
- 24 Para 59
- 25 The Court referred to the approach undertaken by the Courts in India which followed the best practices employed by US courts and the principles enshrined in International Conventions—giving due consideration to contemporaneous laws and legislations.
- 26 *Cryogas Equipment Private Limited v Inox India Limited* 2025 SCC OnLine SC 780, Para 60.
- 27 Para 61.
- 28 Para 67.
- 29 Para 9.
- 30 Para 10.
- 31 *Pernod Ricard India Private Limited v Karanveer Singh Chhabra* 2025 SCC OnLine SC 1701.
- 32 Para 44. The Supreme Court also observed ‘Section 29 (3) presumes confusion only where identical marks are used for identical goods — a condition not met in the present case as the marks.’ See Para 43.
- 33 *Pernod Ricard India Private Limited v Karanveer Singh Chhabra* 2025 SCC OnLine SC 1701, Para 36.
- 34 Para 36.2.
- 35 (1975) AC 396.
- 36 *Pernod Ricard India Private Limited v Karanveer Singh Chhabra* 2025 SCC OnLine SC 1701, Para 36.3.
- 37 Para 36.4.
- 38 Para 3.
- 39 Para 3.
- 40 Para 4.
- 41 Para 5.
- 42 Para 31.
- 43 Para 31.2.
- 44 Para 31.3.
- 45 Para 31.5.
- 46 Para 31.7.
- 47 Para 31.8.
- 48 Para 32.
- 49 Para 32.
- 50 AIR 1965 SC 980.
- 51 *Pernod Ricard India Private Limited v Karanveer Singh Chhabra* 2025 SCC OnLine SC 1701, Para 32.1.
- 52 Para 32.3.
- 53 Para 33.
- 54 Para 33.1.
- 55 Para 33.2.
- 56 Para 33.3.
- 57 Para 34.
- 58 Para 35.
- 59 Para 35.1.
- 60 Para 35.2.
- 61 Para 35.3.
- 62 Para 35.4.
- 63 (1906) 23 RPC 774.
- 64 *Pernod Ricard India Private Limited v Karanveer Singh Chhabra* 2025 SCC OnLine SC 1701, Para 35.5.
- 65 Para 36.1.
- 66 Para 36.2.
- 67 Para 41.
- 68 Para 42.
- 69 Para 52.
- 70 Supreme Court of India, Calendar <<https://www.sci.gov.in/calendar/>> (accessed on 5 December 2025).
- 71 For the purposes of pinpoint citation, the copies of the judgments available on SCC OnLine have been preferred.
- 72 Raza A and Alam G, Patent Law Declared by the Supreme Court of India, *Journal of Intellectual Property Rights*, 29 (4) (2024) 347.