



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL IP SUIT NO. 99 OF 2012

Bunge India Pvt. Ltd. ...Plaintiff
V/s.
Lotus Refinery Pvt. Ltd. & Ors. ...Defendants

Ms. Rashmi Thakur-Iyer i/b. M/s. J.G.B. & Daruwalla for Plaintiff.

CORAM : ARIF S. DOCTOR J.
RESERVED ON : 9th DECEMBER 2025
PRONOUNCED ON : 18th DECEMBER 2025

JUDGMENT:

1. The captioned Suit has been filed seeking reliefs inter alia include injunction against the Defendants restraining them from infringing the Plaintiff's registered trade mark "LOTUS", restraining Defendants from passing off their products as those of the Plaintiffs' and restraining Defendants from using the trade name, corporate name and trading style of the Plaintiff. The prayer clauses of the Suit read thus:

"a) that the Defendants by themselves, their servants, agents, and distributors be restrained by an Order and perpetual injunction of this Hon'ble Court from using in relation to edible vegetable oils, hydrogenated vegetable oils and fats and/or any other goods falling in Class-29 and/or manufacturing, exporting, selling or distributing the said goods or in any manner advertising the said goods under the trade marks "LOTUS" or under any other trade mark which is identical with or deceptively similar to the registered "LOTUS" trade marks of the

Plaintiff bearing Nos. 131541, 131542 and 131543 falling in Class 29 and thereby infringing the said registered trade marks of the Plaintiff.

(b) that the Defendants by themselves, their servants, agents and distributors be restrained by an Order and perpetual injunction of this Hon'ble Court from, directly or indirectly, using in relation to edible vegetable oils, hydrogenated vegetable oils and fats and/or any other goods falling in Class-29 or manufacturing, exporting, selling or distributing the said goods or advertising in any manner goods under the trade mark "LOTUS" or under any other trade mark deceptively similar to the "LOTUS" trade marks of the Plaintiff so as to pass off or likely to pass off and/or enable others to pass off the Defendants edible vegetable oils, hydrogenated vegetable oils and fats as and for those of the Plaintiff's.

(c) That the Defendant be restrained by an Order and perpetual injunction of this Hon'ble Court from using the trade name, corporate name and trading style "LOTUS Refineries" or any other trade name, corporate name and trading style deceptively similar to the Plaintiff's registered "LOTUS" trade marks bearing Nos. 131541, 131542 and 131543 falling in Class 29 and thereby infringing the said registered trade marks of the Plaintiff.

(d)(i) That the Defendant be restrained by an order and perpetual injunction of this Hon'ble Court from using the domain name "www.lotusrefineries.com" or any other domain name deceptively similar to the Plaintiff's registered "LOTUS" trade marks bearing Nos. 131541, 131542 and 131543 falling in Class 29 and thereby infringing the said registered trade marks of the Plaintiff.

(d)(ii) That the Defendant be ordered forthwith by an order and mandatory injunction of this Hon'ble Court to take all necessary steps to have the domain name removed or cancelled by the concerned authority."

2. Defendant Nos. 1 and 2 have filed an unaffirmed copy of the written statement, which is a matter of record. The Defendant Nos. 3 to 5, despite being duly served with the Writ of Summons, have chosen not to contest the Suit. Defendant Nos. 1 and 2 failed to cross-examine the Plaintiff's Witness (PW-1) or present any evidence, despite having ample opportunity to do so. The evidence of Defendant Nos. 1 and 2 was therefore closed by the Order dated 26th June 2025, and it was thus that the Suit was taken up for final hearing.

Submissions on behalf of the Plaintiff

3. Ms. Rashmi Thakur, Learned Counsel for the Plaintiff, submitted that originally, Hindustan Lever Limited ("**Hindustan Lever**") was the proprietor of the three registered trade marks "**LOTUS**", the word mark (bearing no. 131541), and two label marks containing the device of a lotus (bearing nos. 131542 and 131543), all of which were registered on 14th November 1947 in Class 29 for *hydrogenated vegetable oils (vanaspati) and liquid edible vegetable oils excluding gingelly oil*. She submitted that these marks are valid until 14th November 2034.

4. She then pointed out that by a Deed of Transfer of Business Undertaking and Deed of Assignment dated 28th August 2003, the Plaintiff acquired from Hindustan Lever the business undertaking as a going concern along with the said trade marks the details of which are as under:

Trade Mark	Appln. no.	Date of Application	Goods	Status
"LOTUS"(word per se)	131541	14.11.1947	Hydrogenated vegetable oils	Registered and valid upto

			(vanaspati) and liquid edible vegetable oils excluding gingelly oil	14.11.2034
“LOTUS”(label with the device o Lotus)	131542	14.11.1947	hydrogenated vegetable oils (vanaspati) and liquid edible vegetable oils excluding gingelly oil	Registered and valid upto 14.11.2034
“LOTUS” (Label with the device of Lotus)	131543	14.11.1947	hydrogenated vegetable oils (vanaspati) and liquid edible vegetable oils excluding gingelly oil	Registered and valid upto 14.11.2034

Original certified copies of the entry in the Register in respect of the above three registered trade marks bearing nos. 131541, 131542 and 131543 in Class-29 of the Plaintiff are marked in evidence.

5. Ms.Thakur then pointed out that the Plaintiff's predecessor-in-title, Hindustan Lever, has used the trade mark "LOTUS" in respect of edible oils since the year 1947 on a large, continuous and extensive basis. She submitted that by virtue of this long use, extensive publicity and the high quality of edible oils manufactured by the Plaintiffs and the Plaintiffs' predecessor, the said "LOTUS" trade mark has come to be associated in the minds of the public and members of the trade alike exclusively with the Plaintiff.

6. Ms. Thakur, then in support of her contention of long and extensive use and the goodwill garnered by the Plaintiff in respect of the said "LOTUS" trade marks has produced in evidence invoices from 2003 to 2012 and certificates of annual sales for the years 2001 to March 2012 duly certified by a chartered accountant. She pointed out that in the year 2011, which was just a year prior to the year in which Defendants' started adopting the mark "LOTUS" the Plaintiff had achieved sales of approximately Rs. 41,15,74,000/-.

7. Ms. Thakur then submitted that in and around the first week of April, 2012, the Plaintiff came across several hoardings of the trade mark "LOTUS" with the device of a lotus, which were prominently displayed by the Defendant Nos. 1 and 2, by which Defendant Nos. 1 and 2 were advertising the sale of "Soyabean Oil", "Olive Oil", "Sunflower Oil" and "Mustard Oil". It was thus she submitted that the Plaintiff published "Caution Notices" in the leading newspapers such as INDIAN EXPRESS daily, Mumbai Edition dated 14th April 2012, NAVBHARAT (Hindi), Mumbai Edition dated 14th April 2012, and LOKSATTA (Marathi), Mumbai Edition dated 14th April 2012.

8. Ms. Thakur then submitted that the Plaintiff thereafter came to learn that the Defendant No. 1 had applied for registration of the trade mark "LOTUS Refineries" with the device of a "LOTUS" under Application No. 2260870 with the Trade Marks Registry Branch office at Delhi on 3rd January, 2012 for registration of the trade mark "LOTUS" (label) in respect of edible oil in Class 29. She pointed out that the name and address of the Applicant, as mentioned in the said Application, was "*Lotus Pharma Chem Pvt. Ltd., Director Mr. Arun Kumar Sharma Pan No. CFXPS1816N whose address is Plot no. 509, Ind. Area, Phase 2, Chandigarh – 160 002*", and the alleged user claim mentioned in the said Application was 30th April, 2010, as being the date of commencement of business. Ms. Thakur submitted that the date of commencement of the business is not and cannot be the date of user in respect of the trade mark as applied for, and therefore the user claimed by the 1st Defendant was clearly false and misleading.

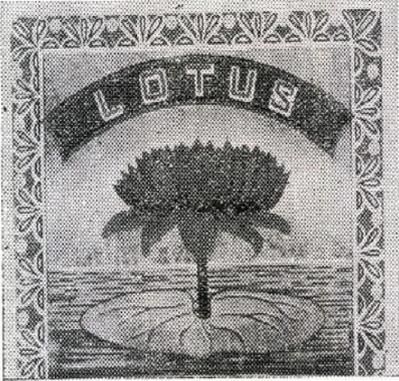
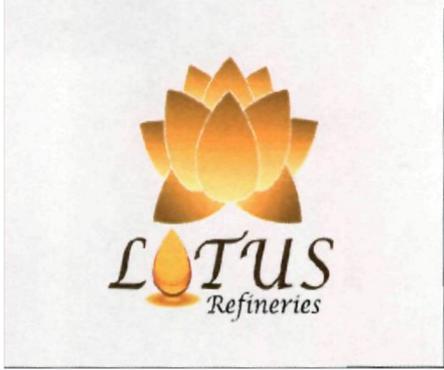
9. Learned Counsel then submitted that the First Defendant on 17th January 2012 had also filed a Second Application for the identical trade mark "LOTUS Refineries" (label with the device of "LOTUS"), being Application No. 2267513 in respect of edible oil in Class 29 with the Trade Marks Registry, Mumbai. She took pains to point out that the Second Application was filed only 13 days after the date of the filing of the First Application. Ms. Thakur pointed out that in the Second Application also the First Defendant had also claimed the same date of user i.e., 30th April, 2010, and that the name and address of the applicant as set out in Form TM – 1 was "*M/S. LOTUS PHARMA CHEM PVT. LTD., DIRECTOR MR. PRASHANT KUMAR*

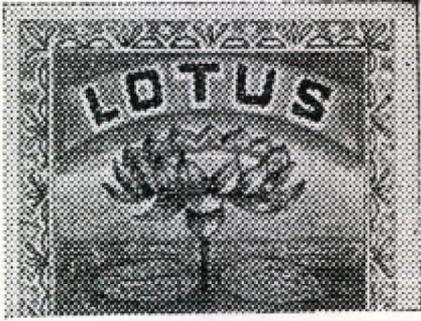
ANAND PAN No. AJHPA7627B, ADDRESS – A/304, NEWBHARTI TOWER CHS LTD, PLEASANT PARK, THANE – 401107. MAHARASHTRA.”

10. Ms. Thakur then submitted that the Plaintiff conducted investigations in the four major cities, namely, Mumbai, Delhi, Agra and Jaipur, to ascertain the availability of edible oil being sold by the Defendant under the impugned trade mark “LOTUS”, and the same, however, revealed that no edible oil was being sold under the impugned trade mark “LOTUS”.

11. Ms. Thakur then submitted that Defendants have bodily lifted the Plaintiff’s registered trade mark and have with impunity applied for the registration of the identical trade marks. She submitted that the goods in respect of both the rival trade marks are identical and that the marks of the Defendants, when compared as a whole with the registered trade marks of the Plaintiff, are visually, phonetically and structurally identical with and deceptively similar to the registered trade marks of the Plaintiff. In support of her contention, she drew my attention to the following tabular comparison of the rival marks:

PLAINTIFFS REGISTERED TRADE MARKS	DEFENDANTS TRADE MARKS
1. “LOTUS” (word per se) – 131541 in class-29 dated 14.11.1947	1. “LOTUS” (label) – 2260870 in class-29 dated 03.01.2012

PLAINTIFFS MARKS	REGISTERED TRADE	DEFENDANTS TRADE MARKS
<p>2. "LOTUS" (label with the device of Lotus) – 131542 in class-29 dated 14.11.1947</p>  <p>3. "LOTUS" (label with the device of Lotus) dated 14.11.1947</p>	<p>2. "LOTUS" (label) – 2267513 in class-29 dated 17.01.2012</p>  <p>3. "LOTUS" label with the device of Lotus – 2335608 in class-29 dated 22.05.2012.</p> 	

PLAINTIFFS MARKS	REGISTERED TRADE	DEFENDANTS TRADE MARKS
		

12. Ms. Lata then submitted that the Defendants' impugned mark is identical to the Plaintiff's registered trade marks, and the goods in respect of which the Defendants are using the impugned mark were also identical and fell within the same class. In these circumstances, she pointed out that Section 29(2)(c) of the Trade Marks Act, 1999, would be applicable. She submitted that since the identity of the marks and the identity of the goods were the same, a case of infringement was clearly made out, and the Plaintiff, as the registered proprietor of the trade mark "LOTUS" was entitled to protection under the provisions of Section 28 of the Trade Marks Act, 1999, restraining the Defendants from using the impugned mark.

13. She further submitted that the Defendants had not raised any defence, much less any credible defence. She submitted that even the documents on the basis of which the Defendants had alleged use of the impugned mark since 1992 were clearly fabricated but, even if assuming otherwise, were subsequent to both the Plaintiff's user and the registration dates of the Plaintiff's "LOTUS" marks. In any event, she submitted that under Section 34 of the Trade Marks Act, 1999, such later

user cannot confer any rights or constitute a defence against the Plaintiff's long-standing statutory rights. Accordingly, the Defendants' use constitutes a clear and direct violation of Section 29(2)(c), and the Plaintiff is entitled to an order restraining the Defendant from in any manner using the trade mark "LOTUS".

14. Ms. Thakur then submitted that the Defendants' adoption of the impugned trade mark and trade name was wholly dishonest. She pointed out that at the time of adoption, the Defendants were aware, or then were deemed to have been aware, of the Plaintiff's registered trade mark. She submitted that it was incumbent upon the Defendants to have conducted a search of the Trade Marks Registry before adopting the impugned trade mark. She submitted that had the Defendants undertaken a search, they would have immediately discovered the Plaintiff's registered trade mark "LOTUS", both in its word and device forms. Ms. Thakur then placed reliance upon the decision of this Court in the case of *Bal Pharma Ltd. v. Centaur Laboratories Pvt. Ltd.*¹, to point out that this Court had held that it was not open to a party who has not acted diligently and not undertaken the requisite search before adopting a trade mark to take the plea of honest adoption or concurrent use.

15. Ms. Thakur therefore submitted that the Plaintiff had more than made out a case for a decree in terms of prayer clauses (a) to (c), (d)(i) and (d)(ii).

Reasons and Findings

16. After having heard Learned Counsel for the Plaintiff, and given the fact that the Defendants have neither contested the Suit nor in any manner denied the Plaintiff's claims, including the specific case of malafides and dishonest adoption, I

¹ 2001 SCC OnLine Bom 1176

am satisfied that the Plaintiff has made out a clear case for relief. The Suit therefore deserves to be decreed in terms of prayer clauses (a) to (c), (d)(i), and (d)(ii), for the following reasons:

- A. The Plaintiff is the registered proprietor of the trade mark “LOTUS”, both as a word mark and as label marks containing the device of a lotus, bearing registration nos. 131541, 131542 and 131543 in Class 29, as is evidenced by the entries from the Register of Trade Marks which have been produced by the Plaintiff and marked in evidence. All these registrations are valid till 14th November 2034. The validity of these registrations has not been challenged by the Defendants.
- B. The impugned marks adopted by Defendant Nos. 1 and 2 are identical to the Plaintiff’s registered trade marks, both visually and phonetically. The use of the impugned trade mark by the Defendant is also in respect of identical goods, namely edible oils, as those sold by the Plaintiff under the Plaintiffs registered trade mark and also fall within the same class. Thus, given the identity of marks and identity of goods, the provisions of Section 29(2)(c) of the Trade Marks Act, 1999, would squarely apply. The Plaintiff, being the registered proprietor of the mark “LOTUS”, is thus, by virtue of Section 28 of the Trade Marks Act, 1999, entitled to restrain the Defendants from using the impugned mark.
- C. The Defendants have failed to establish any prior or lawful user of the impugned trade mark. Even assuming the user claimed by the Defendants to be true, the same is admittedly subsequent to the Plaintiff’s

long-standing user and registration. Such later user cannot confer any right or constitute a defence under Section 34 of the Trade Marks Act, 1999.

D. In addition to infringement, the Plaintiff has also established a clear case of passing off. The Plaintiff has placed on record evidence which establishes the Plaintiff's continuous, extensive, and uninterrupted use of the trade mark "LOTUS" since 1947. The Plaintiff has also, through cogent evidence, established that the Plaintiff has substantial goodwill and reputation in the trade mark "LOTUS". Conversely, the Defendant has not even attempted to rebut the case of the Plaintiff, nor has the Defendant led any evidence in the matter. The adoption of an identical mark by the Defendants in respect of identical goods is not only likely to cause confusion and deception amongst consumers, but in the facts of the present case and given the conduct of the Defendants, the adoption of the impugned trade mark clearly appears to be wilful and deliberate so as to misrepresent to the public that the goods of the Defendant originate from the Plaintiff and thereby ride upon the Plaintiff's goodwill.

E. The Plaintiff's reliance upon the case of *Bal Pharma Ltd. v. Centaur Laboratories Pvt. Ltd.*, is entirely apposite since had the Defendants undertaken a search in the Trade Mark Registry, the Defendants would have been aware of the Plaintiff's registered trade mark. The Defendants not having done so cannot claim any justification for adopting the

impugned trade mark. The Defendant having thus adopted the impugned mark, which is identical or deceptively similar to the Plaintiff's registered trade mark without verification, such adoption is clearly dishonest.

17. Hence, for the reasons set out in A to E above, the Plaintiff is entitled to reliefs in terms of prayer clauses (a) to (c), (d)(i) and (d)(ii).

18. The present Suit, being a commercial suit, is governed by the provisions of the Commercial Courts Act, 2015. Section 35 of the Code of Civil Procedure, 1908, as amended by Section 16 of the Commercial Courts Act, mandates that costs shall ordinarily follow the event and be awarded to the successful party. The provision further requires the Court, while determining costs, to have due regard, *inter alia*, to the conduct of the parties. In the facts of the present case, the record demonstrates that the Defendants have been negligent in prosecuting the matter and have, by their conduct, compelled the Plaintiff to incur substantial and wholly avoidable expenditure. Despite being duly served, the Defendants have chosen not to appear or contest the Plaintiff's claim. There is, therefore, nothing on record to even remotely suggest that the adoption of the impugned mark "LOTUS" by the Defendants was honest or bona fide. On the contrary, the Defendants' complete failure to contest the proceedings is a relevant circumstance which lends further credence to the Plaintiff's case that the adoption of the impugned mark is entirely dishonest and actuated by bad faith. In these circumstances, having regard to the conduct of the Defendants and the statutory mandate under Section 35 of the CPC as amended, the Plaintiff is entitled to an award of compensatory costs.

19. Hence, I pass the following Order:

ORDER

- i. The Suit is decreed in terms of prayer clauses (a) to (c), (d)(i) and (d)(ii) as reproduced hereinabove.
- ii. The Plaintiff shall be at liberty to apply for return of the original documents.
- iii. The Defendants each shall pay costs of Rs. 5 lakhs to the Plaintiff within a period of eight weeks from today.
- iv. In the event, the costs are not paid within a period of eight weeks from today, interest at the rate of 8% shall apply.
- v. The Suit is disposed of in these terms.

[ARIF S. DOCTOR, J.]