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

INTERIM APPLICATION (L) NO. 597 OF 2025
IN
COMMERCIAL IP SUIT (L) NO. 257 OF 2025

Rajeev Prakash Agarwal ...Applicant/Plaintiff

Versus

Tata Play Limited and Others ...Respondents

Mr. Rashmin Khandekar, Mr. Anand Mohan and Ms. Grishma Mody i/b Kartikeya and Associates for Plaintiff.
Mr. Rohan Kadam, R. Vaidya, Sanjeel Kadam and Ms. Nitisha Lad i/b Kadam and Co. for Defendant No. 1.
Ms. Vaishali Bhingade for Defendant No. 2.

Coram : Sharmila U. Deshmukh, J.
Reserved on : 23rd January, 2026.
Pronounced on : 7th March, 2026.

ORDER :

1. This is an action for infringement of trade mark and passing-off. The interim application seeks to restrain the Defendants from using the impugned mark (s) "ASTRO DUNIYA" and/or any trade name/mark comprising "Astro Dunia" or deceptively similar thereto.

2. The Plaintiff is an individual trading as sole proprietary concern in the name and style of M/s. Astro Dunia providing astrological and spiritual services since the year 2005 including *inter alia* consultancy and advisory services based on astrological principles under the mark "AstroDunia" . It is stated that the mark is coined and arbitrary mark

combining “Astro” taken from English language and “Dunia” taken from Hindi language. It is stated that the Plaintiff’s mark include the words Astro Dunia and also the label and device mark “Astro Dunia” conceived by the Plaintiff which is reproduced hereinbelow :

Plaintiff’s mark


3. The Plaintiff is the registered owner of domain name www.astrodunia.com of which “Astro Dunia” forms an essential feature since August, 2005. The Plaintiff’s website is operated under the domain name and the website is freely accessible from locations across India and globally. The mark is used by the Plaintiff on various platforms including numerous TV shows which have been aired on Bhaskar TV, Sadhna and Dabang News and advertisement published in print media etc. The statement of sales as well as copy of specimen invoices have been set out at Exhibit-J of the Plaint and pleaded in Paragraph No. 8.6 of the Plaint. It is stated that several documents were lost to floods in 2015 and not readily available with the Plaintiff

at the time of filing of suit.

4. It is submitted that the Plaintiff's "Astro Dunia" mark is registered in class 45 with user claim of August, 2005 and the objection raised under Section 9(1)(b) of the Trade Marks Act, 1999 [for short, ***"the T.M. Act"***] was replied by the Plaintiff asserting that the mark is an arbitrary mark and distinctive combination of words from English and Hindi language in addition to logo of star and none of three components i.e Astro, Dunia, device of star are sought to be individually monopolised. On 6th March, 2023, the registration was allowed with disclaimer that the registration of the trade mark shall give no right to the exclusive use of all descriptive matters and that labels shall be used together. The Plaintiff has applied separately for copyright registration in respect of the artistic work being the device/label mark of the Plaintiff's "Astro Dunia" mark. The Plaintiff has also applied on 30th July, 2024 for registration of the Plaintiff's mark "Astro Dunia" as word mark, which is pending.

5. Insofar as Defendants are concerned, it is stated that the Defendant No. 1 which is content distribution platform that offers *inter alia* Pay TV and Over the Top Services (OTT) had announced launch of services identical to Plaintiff's services under "Astro Duniya" mark which is visually, phonetically and structurally identical to the Plaintiff's mark with inconsequential addition of alphabet "Y" in the

spelling. A formal cease-and-desist notice was issued on 18th January, 2021 by the Plaintiff which was responded on 28th January, 2021 denying any infringement. Hence, the present suit came to be filed.

6. The Defendant's Affidavit in reply dated 4th February, 2025 contends that the Plaintiff's mark is descriptive and as the registration is granted with disclaimer, the Plaintiff is not entitled to exclusive use in respect of individual components of the mark. The Defendant first used the descriptive expression "Astro Duniya" in combination with its house mark/trade name TATA SKY in December, 2020 and later with TATA PLAY. Prior to adopting the expression "TATA PLAY Astro Duniya" in September, 2020, search was conducted in the Trade Marks Registry and upon confirmation that there was no registration of the said expression, the same was adopted in relation to astrology platform services. The manner of use of the rival marks is completely different.

7. There is no case of passing-off made out as Plaintiff has failed to establish any reputation or goodwill, misrepresentation or any damage to the alleged reputation and goodwill of the Plaintiff or even the exclusive right on the use of expression "Astro Dunia". The Plaintiff's claim is impeded by delay, laches and acquiescence as the Plaintiff was aware of Defendant No. 1's use of the mark since 2021.

8. The Affidavit-in-rejoinder reiterates the stand taken in the Plaint. The Affidavit in sur rejoinder dated 24th February, 2025 contends that

the Plaintiff's marks comprises of placement of two common words meaning astrology and work and is not an invented mark. The Plaintiff is rendering investment advisory services which are prohibited in law without procuring license and no actionable goodwill attaches itself to such activities. The Defendant's services are available on demand on specific portal requiring subscription and the channel is an entertainment/eduction channel and does not render one to one service to the consumers or financial advisory in terms of markets/stocks. The Plaintiff's invoices reveal miniscule sales insufficient to indicate extensive use of the mark.

9. The sur sur rejoinder affidavit dated 24th April, 2025 deny that astrology related services rendered by the Plaintiff since the year 2005 are illegal and any such allegation relating to SEBI regulations is required to be tested in appropriate forum.

10. There is second Affidavit in reply dated 4th October, 2025 filed by the Defendant No 1 which re-iterates the earlier stand. It sets out the registrations obtained of TATA marks and the foray in the DTH services. It contends that its channel is strictly passive television channel and does not offer any personal consultations. Initially the subscribers were provided an option to avail of phone call consultations which has been discontinued in or around October, 2024.

11. The Affidavit in rejoinder dated 5th November, 2025 to the second affidavit in reply contends that in guise of filing composite reply, the Defendant No 1 has attempted to improvise its case and has canvassed defences which are in teeth of its admissions in earlier replies. It is contended that the there is no instance of any third party using the combination of the words Astro and Duniya apart from Plaintiff and Defendant. The Plaintiff is not claiming any exclusivity over "astro" per se but over the distinctive combination mark. It is stated that notwithstanding the disclaimer , the words "Astro Dunia" being essential feature of Plaintiff's mark is liable to be protected. The Defendant's plea of the adoption of the impugned mark being honest and *bona fide* and descriptive use is liable to be rejected. The rival services are identical and there is no meaningful difference in trade channels or consumers. The Defendant No 1 is offering personalised services and has revised the contents of its website before filing of second affidavit.

SUBMISSIONS :

12. Mr. Khandekar, learned counsel appearing for Plaintiff has taken this Court through the registrations of the label/device mark of the Plaintiff and would contend that the words"Astro Dunia" is the prominent and essential feature of the Plaintiff's registered mark. He points out the registration granted with effect from 7th January, 2021

with user claim since 10th August, 2005 in class 45. He submits that by reason of registration of Plaintiff's mark, the same is presumed to be distinctive. He submits that the essential feature of Plaintiff's mark is "ASTRO DUNIA" is not a dictionary term or existing phrase in any language and is combination of English prefix "Astro" and Hindi word "Dunia". He submits that Defendant No. 1 has neither pleaded nor shown even a single instance outside the Plaintiff and Defendant No. 1's use of this combination as phrase of general use to demonstrate that the mark is descriptive. He would further submit that the word "Astro Dunia" at the highest is distinctive or suggestive at its lowest. He submits that in 2005, the Plaintiff has registered the domain name containing the names "ASTRO DUNIA" over which the Plaintiff's services are promoted and points out the media/online presence , the advertisements and annual newsletters.

13. He would submit that the Defendants in January, 2021, started the use of the impugned mark "ASTRO DUNIYA" in respect of identical services, which has been admitted by Defendants in response to the Plaintiff's e-mail of 8th January, 2021 and reply to cease and desist notice. He submits that it is improbable that though Defendant No. 1 conducted a search of Trade Marks Registry, the Defendant No. 1 did not conduct a simple online search which would show the Plaintiff's mark. He submits that Defendant No. 1 has not filed any rectification

application in respect of the Plaintiff's registration and has adopted its mark at its own peril.

14. He would further submit that the disclaimer in the registration prohibits the Plaintiff from asserting its right on three individual components of the Plaintiff's mark i.e. Astro, Dunia, device of star. He submits that the combination of "ASTRO DUNIA" does not fit within the meaning of descriptive matter in respect of which the condition would operate. He submits that the disclaimers in any event do not travel to the market and the Court must consider the whole of Plaintiff's mark including the disclaimed material while deciding the question of infringement. He would further submit that notwithstanding that the mark is label/composite mark with the disclaimer as the essential feature is "ASTRO DUNIA", the same is liable to be protected from infringement. He submits that the contention that mere addition of house mark "TATA" obviates confusion is unacceptable and does not eliminate the likelihood of false representation as to the connection between the Plaintiff and Defendants, where none exists.

15. He would further submit that the Defendant is using "ASTRO DUNIYA" as trade mark and the Defendant is not entitled to any defence of *bona fide* descriptiveness under Section 30 and/or Section 35 of Trade Marks Act, 1999. He submits that the Defendant's own material shows that it has used music to designate its music channel,

comedy to designate its comedy channels and instead of using the word astrology to describe its astrological channel has used the impugned mark "ASTRO DUNIYA".

16. He would further submit that Defendants have belatedly contended that the services are dissimilar falling within entertainment channel, which is contrary to the plea taken in the pre suit correspondence exchanged between the parties. He submits that it is settled that the trade mark classifications are only administrative guidelines and what is required to be tested is the nature of the rival services.

17. He would further submit that plea taken in sur-rejoinder that there is no actionable goodwill is unacceptable since the Plaintiff is offering astrological services for last 20 years without any complaint. He would further submit that the defense of illegality in running the Plaintiff's business owing to SEBI violations proceeds on incorrect premise that the Plaintiff's entire business pertains to financial or market related astrological predictions. He submits that the Plaintiff is offering varied astrological and spiritual services since 2005 and the SEBI regulations relied upon by the Defendants have come into force in 2013. He submits in any event, the violation of SEBI regulations cannot be agitated in present forum.

18. He submits that an artificial distinction is now sought to be drawn by Defendant No. 1 to limit the Plaintiff's right to personalized services and there is enough material on record to demonstrate that Defendant No. 1 is offering personalized/ individual centric services under the impugned mark. He submits that it is only after the last hearing that Defendant No. 1 has revised the descriptions and written contents on its website. He would further submit that the contention that the Defendant's service requires a subscription is contrary to record which shows that Defendant No. 1's services are advertised/marketed and offered through public platforms including Youtube, Google searches, Defendant No. 1's website, etc. He submits that even creation of initial interest by using similar mark at the point of advertisement or display prior to any actual use amounts to infringement. He submits that pertinently it is not the Defendant's case that there is any difference between the Plaintiff's consumer and Defendant's subscribers.

19. He would further submit that once it is shown that Defendant adopted the Plaintiff's mark dishonestly and with notice of Plaintiff's mark, passing-off is proved. He submits that it is not necessary for the sales to be in several crores of rupees and there is no requirement to show actual deceit or ill-intention or fraud. He would further submit that considering the reach of Defendant No. 1's platform, magnitude

of injury to the Plaintiff is of rapid loss of distinctiveness of the Plaintiff's mark as the source indicator of the Plaintiff's services and the loss of goodwill stands established. He submits that the defense of delay/balance of convenience/equity/acquiescence is without merits. In support, he relies upon the following decisions :

Anheuser Busch Inbev India Ltd. vs. Jagpin Brewerise Limited[1]

Sony Music Entertainment India Private Limited vs. Ilaiyaraaja Music N. Management Private Limited and Others[2]

Videocon Industries Limited vs. Whirlpool of India Limited[3]

Pidlite Industries Ltd vs. Jubilant Agri and Consumer Products Limtied[4]

Wockhardt Limited vs. Torrent Pharmaceuticals[5]

Laxmikant V. Patel vs. Chetanbhai Shah and Another[6]

Intercontinental Great Brands vs. Parle Product Pvt. Ltd.[7]

Under Armour INC vs. Anish Agarwal[8]

Gujarat Bottling Co. Ltd. vs. Coco Cola and Others[9]

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1 Commercial Suit No. 110 of 2012, decided on 8th December, 2025.
2 IA (L) NO. 25506 of 2023 in Commercial IP Suit No. 560 of 2022, decided on 8th November, 2023.
3 2012 SCC OnLine Bom 1171.
4 2014 SCC OnLine Bom 50.
5 (2018) 18 SCC 346.
6 (2002) 3 SCC 65.
7 2023 SCC OnLine Del 728.
8 2025 SCC OnLine Del 3784.
9 (1995) SCC 545.

Lupin Limited vs. Eris Lifescience Pvt. Ltd.[10]

Pidlite Industries Ltd. vs. Zar Metamorphose Combine[11]

Kedar Nath Motani and Others vs. Pralhad Rai and Others[12]

IFB Agro Industries vs. Siggil India Ltd.[13]

Encore electronics Ltd. vs. Anchor Electronics and Electricals Pvt. Ltd.[14]

Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd.[15]

Sun Pharma Lab vs. The Madras Pharmaceuticals[16]

Renissance Hotel vs. B. Vijaya Sai[17]

Meher Distilleries vs. S. G. Worldwide[18]

Jaquar Company vs. Villeroy Boch AG[19]

Allied Auto Accessories Ltd. vs. Allied Motors Pvt. Ltd[20]

Schering Corporation vs. Klitch Co. (Pharma) Pvt. Ltd.[21]

Indchmie Health Specialites Pvt. Ltd. vs. Naxpar Labs Pvt. Ltd.[22]

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10 2015 SCC OnLine Bom 6807.
11 2020 SCC OnLine Bom 2382.
12 1959 SCC OnLine SC 16.
13 (2023) 4 SCC 2009.
14 2007 SCC OnLine Bom 147.
15 (2001) 5 SCC 73.
16 2016 SCC OnLine Bom 9481.
17 (2022) 5 SCC 1.
18 (2021) SCC OnLine Bom 2233.
19 2023 SCC OnLine Del 2734.
20 2002 SCC OnLine Bom 1138.
21 1990 SCC OnLine Bom 425.
22 2002(2) Mh.L.J. 513.

Saga Lifescience Limited vs. Aristo Pharmaceuticals[23]

Century Traders vs. Roshal Lal Duggar and Co.[24]

Lupin Limited vs. Eris Lifesciences[25]

Empire Spices and Foods Ltd. vs. Sanjay Deshmukh[26]

Emami Limited vs. Hindustan Unilever Ltd.[27]

Pidlite Industries Ltd. vs. S. M. Associates and Others[28]

Serum Institute of India Ltd. vs. Green Signal Bio Pharmaceuticals[29]

Jagdish Gopal Kamath vs. Lime and Chilli Hospitality[30]

Prince Pipes and Fittings vs. Shree Sai Plast Pvt. Ltd.[31]

20. *Per contra*, Mr. Kadam, learned counsel for Defendant No. 1 would submit that the Defendant No. 1 is operator of TATA Play DTH services which broadcasts through various proprietary and other television channels. He submits that in or around December, 2020, the Defendant No. 1 launched "TATA PLAY Astro Duniya" television channel exclusively available on TATA Play DTH/TV service for subscription fee

23 2022 SCC OnLine Del 1351.
24 ILR 1977 (ii Delhi 711).
25 2015 SCC OnLine Bom 6807.
26 Interim Application No. 2119 of 2025, decided on 30th June, 2025.
27 2024 SCC OnLine Cal 3579.
28 2003 SCC OnLine Bom 143.
29 2011 SCC OnLine Bom 696.
30 2015 SCC OnLine Bom 531.
31 2024 SCC OnLine Bom 3743.

of Rs. 60/- per month. He submits that channel telecasts scheduled programs discussing astrology and is available for viewing exclusively only on Defendant No. 1's "Tata Play" service. He submits that Defendant does not offer one to one consultations or personal appointments and the same passive content is beamed to the masses. He submits that initially subscribers were provided an option to avail phone call consultations by calling particular number, which reference services has been discontinued in or around October, 2024.

21. He submits that it is only on 8th January, 2021, that the Plaintiff applied for trade mark registration of the device mark of "Astro Duniya" in class 45 which was granted registration with disclaimer. He submits that the Plaintiff cannot split up the mark and is bound by the condition to use the mark as a whole. He points out to the Plaintiff's response to the examination report that the distinctiveness of its marks was in combination of the words alongwith the logo of the star. He submits that the Plaintiff is yet to receive the registration of the word mark "ASTRO DUNIA".

22. He would submit that the online presence of the Plaintiff indicates that it offers financial services and is dedicated to help clients about making informed decisions about their investment. He submits that the pith and substance of the Plaintiff's services is rendition of personalized investment services to his client by following astrological

principles.

23. He would further point out that the specimen invoices annexed to the plaint lack the hallmark of invoices issued in the ordinary course in the absence of any service/tax registration, GST registration and that the invoices are not even signed and are issued to individuals mainly addressed by name without any addresses. He submits that there is no document to show receipt of payment against the invoices and there are no I.T. returns or assessment orders to corroborate these invoices. He submits that the sale certificates have not been certified by the Chartered Accountant but are self-certified. He submits that the pleaded case in paragraph No. 18 of the plaint is that the Defendant's mark is used in relation to the identical services which is lacking in material particularization and is insufficient in law to fasten the liability under Section 29(2) to establish similarity in services.

24. He submits that no case for relief is made under Section 29(1) of Trade Marks Act, 1999 since the services are not the same. He submits that the Plaintiff's mark is registered in class 45 and the explanatory note to class 45 asserts that it includes mainly legally and security services as well as certain personal and social services rendered by others to meet the need of individuals. He submits that the common feature of the services classified in class 45 is rendition of personal services tailored to specific needs of individuals whereas the

Defendant's services provides entertainment/education to consumers and is relatable to classification in class 38 and class 41 and it is in this class that the Defendant No. 1 has registered the "TATA Play" trade mark.

25. Drawing attention of this Court to provision of Section 29(2) of the Trade Marks Act, 1999, he submits that similarity of service is to be examined from business and commercial point of view taking into account the user and use of services, the physical natures of services, the trade channels and the extent to which the services are in competition with one another. He submits that these facts ought to have been pleaded in the Plaint and there is no factual foundation led in the Plaint.

26. He submits that the Plaintiff's latest website shows that there is no personalized services rendered and rendition of services even otherwise through television medium is inherently not personalized. He submits that Defendant No. 1 has online presence on Youtube and Google and test is to assess whether services are sold through the same channels.

27. He submits that the marks are not identical and there is no deceptive similarity. He submits that the Plaintiff's claim to exclusivity to the words "Astro Dunia" must be examined in backdrop of Section 17 of the Act read with Section 28(1) and (2). He submits that having

accepted the distinctiveness in the Plaintiff's mark in its combination of the word along with logo or star, the Plaintiff cannot now claim monopoly over the words.

28. He submits that the combination of "Astro" and "Dunia' is Hinglish which is a colloquial manner of speaking in this country. He submits that the mere use of the mark does not give it a secondary meaning and sales and advertisement expenses are not the sole criteria. The Plaintiff is required to show the market survey, etc. as the law imposes such burden since the protection on such descriptive marks leads to reduction of ordinary expressions to describe and/or inform customers about the products.

29. He submits that in the present case, the rival marks are device marks and the test is similar to copyright by examining the aspect of depiction and stylization, lettering and placement of indices. He submits that the prefix "TATA PLAY" enjoys trade mark registration and is well-known trade mark and there can be no absolute proposition that the use of the house mark does not dispel confusion. He submits that the claim of the Plaintiff that the mark is a well-known trade mark does not satisfy the requirement of Section 29(4).

30. He submits that the argument of initial interest confusion also fails since the services are different and are available through different trade channels. Insofar as the aspect of passing-off is concerned, he

submits that Plaintiff has not proved goodwill and pith and substance of Plaintiff's business is in relation to investment advisory services and even assuming it has goodwill, the same is not actionable as there is violation of SEBI regulations. He submits that there are no commonality of activities which is the relevant consideration. He would submit that the Plaintiff's alleged sales are only to tune of Rs. 1.07 crores for over 20 years and Rs. 1.4 crores for over 20 years which are also uncertified. He submits that there is no misrepresentation in the present case. He submits that the balance of convenience is in favor of Defendant No. 1 as Defendant No. 1 started its channel in December, 2020 and the Plaintiff has sent its first email to Defendant in January, 2021 and suit has been filed in January, 2025 by which time, the Defendant No. 1 has built its business for over five years and expended substantial money which constitutes acquiescence. In support, he relies upon the following decisions :

Balkrishna Hatecheries vs. Nandos International Ltd. and Another[32]

Advance Magazine Publishers Inc. vs. M/s. Just Lifestyle Pvt. Ltd.[33]

K. R. C. S. Balkrishna Chetty and Sons and Co. vs. State of Madras[34]

Unichem Laboratories Ltd. vs. Ipca Laboratories

32 2007 Vol. 109(2) Bom. L. R. 0911.
33 2013 SCC OnLine Bom 8417.
34 (1961) 2 SCR 736.

Ltd. and Another[35]

Phonepe Private Limtied vs. Resilient Innovations Private Limited[36]

Aegon Life Insurance Company Ltd. vs. Aviva Life Insurance Company India Ltd.[37]

Anneliese Hackmann vs. The Registrar of Trade Marks[38]

Rich Products Corporation vs. Indo Nippon Food Limited[39]

Sun Pharmaceuticals Industries Ltd. vs. Meghmani Lifesciences Ltd.[40]

Meso Pvt. Ltd., Mumbai vs. Liberty shoes Ltd., Haryana[41]

Toyoto Jidosha Kabushiki Kaisa vs. Prius Auto Industries Limited[42]

Brihan Karan Sugar Syndicate Pvt. Ltd. vs. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana[43]

APEX Laboratories Pvt. Ltd. vs. Deputy Commissioner of Income Tax, Large Tax Payer Unit-II[44]

S. Venkatramaiah vs. K. Venkataswamy[45]

Nuziveedu Seeds Ltd. vs. Mahyco Monsanto

35 2011 SCC OnLine Bom 2114.
36 2023 SCC OnLine Bom 764.
37 2019 SCC OnLine Bom 1612.
38 Vol. LXIII. The Bombay Law Reporter 650.
39 ILR (2010) II Delhi 663 CS (OS)
40 IA(L) NO. 9484 of 2025 in ComIP (L) No. 353 of 2025, decided on 23rd December, 2025.
41 253 2020 (1) Mh. L.J.
42 (2018) 2 SCC 1.
43 (2024) 2 SCC 577.
44 (2022) 7 SCC 98.
45 1976 (2) (H.C) 28 Andhra Pradesh law Journal.

Biotech (India) Pvt. Ltd.[46]

Office Cleaning Services Ltd. vs. Westminster Window and General Cleaners Limited[47]

Pernod Ricard India Private Limited vs. Karanveer Singh Chabra[48]

ARG Outlier Media Pvt. Ltd. vs. Rayudu Vision Media Ltd.[49]

31. In rejoinder, Mr. Khandekar would submit that the Defendant's defense of dissimilar services is an afterthought. He submits that the belated case of discontinuation of personalized services since October, 2024 is false and unbelievable and in fact, constitutes an admission that the rival services were clearly alike. He submits that pertinently the Defendant's current website shows a drop down response that their astrologers are certified professionals which ensures that viewers receive high quality astrological services while seeking personalized "kundli" reading which has been suppressed by the Defendant.

32. He submits that defense of prosecution history does not apply in the present case as Section 9(1)(b) cited in examination report applies not only to the words, but also to indications. He would submit that the Defendant has admitted to using the mark for advertisement and for promoting the Defendant's services even outside its DTH

46 2020 SCC OnLine Bom 816.
47 No. 2 Vol. LXIII. Report of Patent, Design and Trade Mark Classes dated 19th June, 1946.
48 2025 SCC OnLine SC 1701.
49 2023 SCC OnLine Bo, 1825.

ecosystem and specific instances are actually shown in the present case. He submits that Defendant has limited its argument only to the action for passing-off and the argument of no actionable goodwill is entirely irrelevant to the action for infringement.

REASONS & ANALYSIS :

33. The Plaintiff's registration is of composite label mark comprising of the words "Astro Dunia" along with the device of star. The interim relief which the Plaintiff seeks is to restrain the Defendants from using the impugned mark "ASTRO DUNIYA"/ Astro Duniya and/or trade name/mark comprising "ASTRO DUNIA" or any deceptively similar mark to the Plaintiff's mark "ASTRO DUNIA". The Plaintiff thus claims an exclusive right to the words "ASTRO DUNIA" *per se* claiming the words "ASTRO DUNIA" to be inherently distinctive and essential feature of its mark. The Plaintiff has secured registration of its device mark of "ASTRO DUNIA", which registration was applied on 7th January, 2021 with user claim of 10th August, 2005 in class 45 i.e. astrological and spiritual services, astrological consultancy, astrological advisory services.

34. At the time of examination, the Registrar of Trade Marks had raised an objection under Section 9(1)(b) of Trade Marks Act, 1999, which reads as under:

"9. Absolute grounds for refusal of registration.- (1)

> The trade marks-
> (a)…..
> (b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of goods or rendering of the service or other characteristic of the goods or service.
> (c)……
> shall not be registered:
> Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well known trade mark."

35. Section 9(1)(b) bars the registration of mark which is descriptive of the goods/services quality, kind, purpose etc. In response to the objection, the Plaintiff has stated as under:

> "The distinctiveness of the present mark is in its innovative combination of the words in English "Astro" and Hindi "Dunia" along with the logo of star.
>
> ...There can be cases where all the component parts of a trade mark are separately common, to the trade, yet, the mark as a whole may be considered distinctive, if combination gives distinctiveness, which is the applicant's case. Because distinctiveness, has to be considered on the basis of impression the mark creates as a whole. The mark does not become non distinctive by virtue of the only fact that it includes a mark or a word which is not separately registrable. Not only this, combined features of the mark together constitutes a distinctive entity different in feature.
> …. Apart from the above,applicant also has a strong web presence since 2005. Owing to the long and continuous use of 15 years and advertisement and promotions "Astro Dunia" have come to be exclusively associated to the applicant in the minds of general public."

36. The Plaintiff's case for registration was that distinctiveness is achieved by reason of combination of all features of the mark together which constitutes a distinctive entity different in feature. To substantiate its right to restrain the Defendants, in present proceedings the distinctiveness is claimed in combination of the words "Astro Dunia". Having taken a specific stand before the Registrar of Trade Marks, the Plaintiff is now estopped from claiming any distinctiveness in the words "ASTRO DUNIA". The Registrar of Trade Marks granted registration to the Plaintiff's mark with the disclaimer as under:

> *"The registration of this trade mark shall give no right to the exclusive use of all descriptive matters. This is condition of registration that labels shall be used together."*

37. The registration is thus granted with specific disclaimer that the labels shall be used together meaning that the words alongwith the logo of star makes the mark distinctive and not the individual components and neither the combination of individual components. The Plaintiff reads the disclaimer to mean that prohibition is from asserting any right in three individual components viz "Astro", "Dunia" and device of star and not against the claim for unique combination of words Astro Dunia. The disclaimer is required to be read in the background of the objection and the response to the objection and

when so read, it is *prima facie* evident that the distinctiveness claimed was in entire combination of the features and not in the combination of the words ASTRO DUNIA. The words "Astro Dunia" is combination of the English word "Astro" and Hindi word "Dunia". Assuming that the mark "Astro Dunia" is coined by the Plaintiff, the mark is being used in respect of astrology services rendered by the Plaintiff. The words "Astro" and "Dunia" when taken separately are completely descriptive as the word "Astro" is clipped version of the English word 'astrology' and the word "Dunia" is a Hindi word which means 'world'. Taken together, the mark means the world of astrology and combination of the words results in the word "ASTRO DUNIA" being completely descriptive as relating to the world of astrology which are services rendered by the Plaintiff. The combination of the clipped version of the English word with the Hindi word *prima facie* does not make it inherently distinctive in our country where there is tendency of blending Hindi and English and spoken as such. In fact, the Cambridge Dictionary defines Hinglish as a mixture of Hindi and English, a special type of English used by the speakers of Hindi. Section 29(9) of Trade Marks Act, 1999 provides for infringement by spoken use of distinctive elements of a registered trade mark. The Plaintiff's mark being descriptive, there are no distinctive elements for application of the provisions of Section 29(9). The decisions of ***Encore Electronics Ltd vs***

Anchor Electronics (supra) and ***Renissance Hotel vs B. Vijaya Sai*** (supra) are distinguishable as in the present case, the Plaintiff's mark is non distinctive.

38. The disclaimer was imposed as the mark consisted of descriptive matter and the only entitlement is to use of the composite mark as a whole. In this context, if Section 17 of the Trade Marks Act, 1999 is seen, clause (b) of sub-section (2) of Section 17 prohibits the exclusive right in any matter which is common to the trade or is otherwise of a non-distinctive character. The disclaimer which has been imposed by the Registrar is in the context of Section 17(2)(b) by holding the mark to be descriptive and of non-distinctive character. The Plaintiff claims infringement by use of the words "Astro Dunia" which words stand disclaimed.

39. The Hon'ble Apex Court in the case of ***Registrar of Trade Marks vs Ashok Chandra Rakhit***[50] held that the real purpose of disclaimer is to define the rights of the proprietor under the registration so as to minimize, even if it cannot wholly eliminate, the possibility of extravagant and unauthorised claims being made on score of registration of trade mark. The Hon'ble Apex Court noted that where a distinctive label is registered as a whole, such registration cannot possibly give any exclusive statutory right to the proprietor of trade

50 (1955) 1 SCC 655.

mark to the use of particular word or name contained therein, apart from the mark as a whole.

40. In the present case, the disclaimer is as regards the descriptive matter i.e. ASTRO DUNIA. The Plaintiff cannot predicate its case of infringement on the part of mark which stands disclaimed by contending that the disclaimed part has been copied by the Defendant. The disclaimed portion cannot form the basis for infringement. In event the Plaintiff's case of infringement would have been premised on infringement of entire label mark and not exclusively of the disclaimed portion, while assessing the deceptive similarity, the marks would have to be compared as a whole including the disclaimed part. In ***Pidilite Industries Vs S.M. Associates*** (supra), it was the Defendant's contention that the disclaimed word SEAL should be ignored while considering the aspect of infringement. The Plaintiff therein did not allege infringement by reason of copying of the disclaimed part SEAL but the entire mark M-SEAL vs S M-SEAL. In the case of ***Serum Institute of India Ltd vs Green Signal Bio Pharma Pvt Ltd*** (supra), the disclaimed portion was "BCG" in Plaintiff's mark ONCO BCG. The infringement was claimed by use of "BCG ONCO" and not based exclusively on the disclaimed portion. In that factual scenario, the Court rightly compared the marks as whole including the disclaimed portion. The decision of ***Lupin Limited vs Eris Lifescience Pvt Ltd***

(supra), ***Sun Pharma Laboratories Ltd vs The Madras Pharmaceuticals & Anr*** *(*supra) and ***Empire Spices and Foods Limited vs Sanjay Deshmukh*** (supra) and ***Prince Pipes and Fittings Ltd vs Shree Sai Plast Pvt Ltd*** (supra) did not deal with the case of registration being granted subject to disclaimer. In the decision of ***Jagdish Gopal Kamath & Ors vs Lime and Chilli Hospitality*** (supra) , the disclaimer was on the exclusive right to use the word "Madras". The claim for infringement was not based on the disclaimed word but the entirety of the mark which is the distinguishable feature. The decision of ***Anheuser Busch Inbev India Ltd vs Jagpin Brewerise Limited*** (supra) turned on facts of that case by considering the descriptive material contained in respect of the rival marks therein.

41. In the case of ***Aegon Life Insurance Company Ltd. vs. Aviva Life Insurance Company India Ltd.*** (supra), this Court noted the test for descriptive mark and reproduced in paragraph no. 28 the decision in the case of ***Bharat Enterprises (India) vs. C. Lala Gopi Industrial Enterprises & Others***[51] as under:

> "The true test in determining whether the particular name or phrase is descriptive is whether as it is commonly used, it is reasonably indicative and descriptive of the thing intended. In order to be descriptive within the condemnation of the rule, it is sufficient if information is afforded as to the general nature or character of the article and it is not necessary, that the words or marks used shall comprise a clear,

51 AIR 1999 P&H 231.

> complete and accurate description. The meaning which should be given is the expression and significance which has been conveyed in the public. Whether the words or marks claimed as trade marks are descriptive, or whether they are suggestive, arbitrary, fanciful must be tested with respect to the articles which they are applied and the mark must be considered as a whole."

42. Applying the said principles to the Plaintiff's registered label mark, the words "Astro Dunia" with the device of star above the words is purely descriptive of the services offered to the public i.e. astrology. Even *assuming arguendo* that it is a coined word, the mark is not arbitrary and unconnected to the services offered by the Plaintiff. The Plaintiff's invoices itself uses the mark "ASTRO DUNIA" followed by the words "Your World of Astrology" which indicates the descriptive nature of the trade mark. In the Affidavit in reply, the Defendant has placed on record screen shots of various websites using the words Astro World and Astro ki duniya, which shows *prima facie* the common use of term. There cannot be any two views that the use of the words astrology or its clipped version combined with the word depicting the word "world" either in english or hindi would be used commonly for describing astrology services in India such as World of Astro, Astrology ki Duniya, Astro World, Astro Dunia etc. The fact that the invoices of the year 2005-2006 which are placed on record makes a reference to the words "Astro Dunia" and describes it as a world of astrology is a clear indicator that the same was used in a descriptive sense. *Prima*

facie I do not find that the Plaintiff's mark "Astro Dunia" to be anything but descriptive.

43. For purpose of comparison, the rival marks are reproduced hereinbelow:

Plaintiff's mark	Defendant's mark
	

44. For purpose of assessing infringement, the anti dissection rule requires that the marks must be compared as a whole. *Prima facie* comparison of the whole mark shows the dissimilarity in the rival marks. The Plaintiff's mark is a composite label comprising of the words AstroDunia alongwith the device of star above the words. The Defendant's mark is Astro Duniya which is used alongwith the Defendant's house mark TATA PLAY. The manner of depiction of the rival marks is different. In the Defendant's mark, the words Astro Duniya are placed one below the other in contrast to the manner of depiction of words AstroDunia in the Plaintiff's mark in a horizontal manner. The Defendant's house mark is a renowned industry house which is *prima facie* sufficient to distinguish the rival marks. The addition of the house mark obviates the possibility of confusion

particularly, considering the house mark "TATA Play" which is depicted prominently and especially when the access to the Defendant's mark is by a registered subscriber, who is well informed that it is the Defendant who is rendering the services. The contention that the essential feature of the Plaintiff's mark being Astro Dunia is required to be statutorily protected will run foul of the disclaimer imposed while granting registration. The proposition of comparison of the essential feature will not apply when the words stand disclaimed. If the said contention is accepted, then the disclaimer would be rendered meaningless. The principle that disclaimers do not travel to the market would not apply to present facts as the services rendered are dissimilar and not available through same trade channels.

45. The allegation that the Defendant is using the words "Astro Duniya" even without the house mark TATA PLAY to substantiate aspect of similarity is misplaced as the extract from the Defendant's website at Exhibit "F" to the rejoinder makes specific reference to TATA PLAY ASTRO DUNIYA and the reference to only Astro Duniya in the website is in descriptive sense. As far as the decisions in ***Meher Distilleries Pvt Ltd vs SG World wide InV & Anr*** (supra) and ***Jaguar Company Pvt Ltd vs Villeory Boch AG & Anr (****supra)* are concerned, there can be no debate that there is no absolute proposition in law that the use of the trade mark with the housename would not amount

to infringement and will obviate likelihood of confusion. Every case has to be tested on its own individual facts. The contention of the Plaintiff that the consumers will be put into a state of wonderment as to whether the Defendant has acquired Plaintiff's brand and business to the Plaintiff's detriment overlooks the primary difference of the Defendant being a DTH service provider.

46. The Plaintiff claims to be prior adopter and user of the mark since the year 2005. The application of the Plaintiff for registration of the device mark was filed on 7th January, 2021 with user claim of 10th August, 2005. It is specifically pleaded in paragraph 1 of the Plaint as under :

> "...Since atleast 2005, the Plaintiff's services have been provided/marketed/promoted openly, extensively and continuously across India as well as globally under the Plaintiff's distinctive trade mark/name 'Astro Dunia/Astro Dunia' including interalia label/device marks/domain name containing "ASTRO DUNIA"/"ASTRODUNIA" as the dominant, prominent, essential and leading feature thereof (each and collectively referred hereinafter as the Plaintiff's 'Astro Dunia' Marks(s) as the context may require.)"

47. The pleadings indicate claim of user since the year 2005 not only of the words "Astro Dunia" but also of the label/device mark, which is *prima facie* not substantiated from the material on record. In so far as the domain name is concerned, the use of the word "Astro Dunia' as part of domain name and website content will have to be read in the

background of the disclaimer placed while registering the device mark. As far as the website archives are concerned, the trade mark used by the Plaintiff is the word "Astro Dunia" with tagline "Our world of Astrology" in the year 2011-2012. Perusal of the website extracts would indicate that along with the words "Astro Dunia" and tagline "Our world of Astrology", the device used with the mark is as under :-

48. At Page 558 of the Plaint, the word "ASTRODUNIA" is used during the years 2006-2007 along with the following device:

49. *Prima* facie, the material on record indicates use of the mark "Astro Dunia" along with logos distinct from the device mark which has been registered. There is one annual letter of 7th January, 2016 in which the registered device mark is used and thereafter the use is shown from the year 2020. Apart from solitary use in 2016, there is no material on record to show the use of the labels/logos since the year 2005 as claimed. The Plaintiff has placed on record about 30 volumes of documents consisting of website extracts, newsletters and annual letters stated to be published by the Plaintiff. Volume 2 and Volume 3 i.e. from pages 106 to 571 contains an introduction which is found in several pages such as pages 281, 331, 338,342 which reads as under:

> "Astrodunia officially registered as MAA ASTRODUNIYA PRIVATE LIMITED incorporated in the year 2005 provides masses with various top priority and quality astrological reports, analysis, services and tips for trading in the financial segment such as stock market and commodity market across the globe.
> The firm also has experience as a stock and commodity broker in the year 2006-2010. The accuracy of tips provided by astrodunia.com has been about 92%."

50. The introduction *prima facie* indicates that the incorporation in the year 2005 was of a private limited company and Astrodunia was officially registered as the private limited company. There is no pleading in the plaint explaining the connection between the Plaintiff, who is an individual, the mark Astro Dunia and the private limited company MAA ASTRODUNIYA PRIVATE LIMITED. From the introduction

in the news letter, it appears that the firm of Astro Dunia was registered in the year 2005 as MAA ASTRODUNIYA PVT LTD. Similarly Volume 21 to 25 i.e. from pages 4813 to 6139, which are daily/weekly news letter (market time report) mentions that all rights are reserved by Maa AstroDuniya Pvt Ltd. At Page 6861 of the annual letter for the year 2013-2015, the name of the company Maa Astro Duniya Pvt Ltd is mentioned along with the name of the present Plaintiff. The plaint pleads that the Plaintiff is trading as sole proprietary concern in name and style of M/s Astro Dunia and that of prior user of the mark since the year 2005, which appears to be *prima facie* doubtful as the volumes of documents produced on record reflects the name of the private limited company for which there is no explanation. Despite production of volumes of newsletters claimed to be published by the Plaintiff, there is not a single averment as to the number of subscribers of these newsletters to demonstrate the enormity of the goodwill and reputation of the Plaintiff.

51. Insofar as invoices are concerned, the invoices either makes a reference to the name "Maa Astro Duniya Pvt. Ltd." or the words "Astro Dunia" and not to the device mark. This is apart from the fact that *prima facie* the invoices are unacceptable as the invoices contains only the name without any details of the consumers such as address, time and duration of visit. There is no service tax details printed on the

invoice and the invoices do not bear the signature of the Plaintiff and does not use the device mark. The statement of sales is a self-attested statement by the Plaintiff signed as proprietor for ASTRO DUNIA and shows the business done by Maa Astro Duniya Private Limited under the Plaintiff's "Astro Dunia" mark and not of the Plaintiff who is one Rajeev Agarwal trading in the name and style of M/s. Astro Dunia.

52. Further, some of the advertisement invoices which are placed on record shows the vendor as Maa Astro Dunia Limited and not the name of the present Plaintiff. *Prima facie,* at this stage, it is difficult to accept, based on the material on record that since the year 2005, the Plaintiff was using the entire label/device of the Astro Dunia in respect of which registration was obtained or even the mark Astro Dunia. As the material on record does not demonstrate the use of the registered mark by the Plaintiff since the year 2005 , without evidence being led, it is difficult to accept the prior use of the registered mark by the Plaintiff since the year 2005.

53. The Plaintiff having chosen to adopt a trade mark which is descriptive of services offered has to discharge the burden of proving that the registered trade mark has acquired secondary meaning which means distinctiveness on account of long usage and promotion of such an extent that the customers would associate the trade mark only with the Plaintiff. It is required to be proved by producing cogent material

the manner in which the public perceives the mark and that the primary meaning of the word is forgotten and when the word "Astro Dunia" is used, it is only Plaintiff's services which comes in the mind of general public. The burden is thus greater on the Plaintiff when the mark is held to be descriptive. In the present case, as discussed above, the material placed on record relates to the different manner of use of the trade mark "Astro Dunia" along with different devices and the Plaintiff's registered trade mark which is the composite label is not shown to have been acquired secondary meaning.

54. It is also pertinent to note that it is only recently that Plaintiff has applied for registration of the word mark "Astro Dunia" which implies that the Plaintiff was aware of the restrictions which were placed on its exclusive right of user by reason of disclaimer imposed on registration and thought it fit to apply for registration of the word mark.

55. The Defendant is a DTH service provider and uses the mark ASTRO DUNIYA alongwith its house mark of TATA PLAY. The Defendant's adoption of the words Astro Duniya in respect of its astrology services in descriptive sense is *prima facie* bonafide. The use of the housemark is with the intent to identify the source of the broadcasted content as emanating from the Defendant. In reply to the cease and desist notice, the Defendant has contended that the mark

was adopted by the Defendant as it aptly describes astrology platform services and that it has taken a search in trade mark registry. *Prima facie* the defence of adoption of the word ASTRO DUNIYA for describing an astrology channel is possible acceptable explanation. The search taken in the trade mark registry cannot singularly constitute the driving factor to hold that the mark is used in trade mark sense.

56. Coming to the rival services, the pleading in paragraph 17 of the plaint is that the Plaintiff and the Defendant admittedly deal in identically/similar services. In paragraph 18 of the plaint, it is pleaded that the Defendant's impugned mark is used in relation to services identical and/or similar and/or allied and/or cognate to those of which the Plaintiff's registered trade mark is used. The Plaintiff's pleaded case swings between identical services to similar services to allied or cognate services attempting to fit its case in one or other category of infringement. The Plaintiff is expected to come with specific pleadings which is absent in present case. The material produced on record by the Plaintiff in the form of website archives comes with the heading as " Predictions – Stock Market Commodity Market and the webpage is substantially devoted to the predictions on the stock market. The volumes of newsletters produced on record also pertains to stock market and commodity market predictions. The use of the label mark

even if accepted on 7th January, 2016 at Page No. 577 comes with a tagline "We predict stocks, commodities, forex". The linkedin page at page no. 637 of the Plaint describes the services as financial services and that the Plaintiff is dedicated to helping the clients make informed decision about their investment. The facebook page introduces the Plaintiff as a remarkable name in field of financial astrology. The specimen invoices produced by Plaintiff to show consultation and horoscope analysis are inadequate and not backed by sufficient supporting material to come to a *prima facie* finding that Plaintiff rendered astrology services on life predictions apart from financial market predictions. The promotional material placed on record *prima facie* projects the Plaintiff as financial market advisor based on astrology. The newsletters on record are replete with the stock market and financial market predictions.

57. On the other hand, the Defendant is operator of Tata Play DTH services which broadcasts various television channels relating to music, cinema, sports entertainment, and one of the channels is astrology services. It advertises its services as subscriber services and astrology linked life predictions. For purpose of availing these services, the consumer is required to subscribe to TATA Play DTH Services, have a set top box installed and thereafter, pay monthly subscription fees for the purpose of viewing the channel. The same astrology content is beamed

to the masses as opposed to the one to one consultation offered by the Plaintiff. Further the Defendant is not shown to render astrology predictions in financial markets, which is the core service rendered by the Plaintiff. I am unable to read the email chain between the parties as an admission that the rival services are identical by mere use of the words "astrology services" and in any event, the similarity in the services is required to be considered by applying the well settled tests.

58. In the case of ***Balkrishna Hatecheries vs. Nandos International Limited and Another*** (supra), this Court noted the leading case of ***British Sugar Plc v. James Robertson and Sons Ltd.***[52] identifying the essential factors while considering whether the goods were of the same description as under :

> (a) the respective uses of the respective goods or services;
>
> (b) the respective users of the respective goods or services;
>
> (c)the physical nature of the goods or acts of service;
>
> (d) the respective trade channels through which the goods or services reach the market;
>
> (e) in case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are or are likely to be found on the same or different shelves;
>
> (f) the extent to which the respective goods or

52 [1996] R.P.C. 281.

services are competitive. This inquiry may take into account how those in trade classify the goods, for instance whether market research companies, who of course act for industry, put the goods or services in same or different sectors.

59. Applying the tests to the rival services, in my view, there is no similarity for the following reasons:

(i) The Defendant is a DTH service provider which broadcasts through various television channels and the same content is beamed to the entire subscriber base. On the other hand, the services of the Plaintiff are personalised services offered on one to one basis and predictions are individual centric.

(ii) The users of the Defendant's services are consumers who have availed the services by payment of the subscription fees in respect of entire bouquet of channels not restricted to astrology channels which is not the case in respect of Plaintiff's services.

(iii) The Defendant's services can be availed only by subscription mode unlike the Plaintiff's services.

(iv) The rival services are not competitive in as much as the Defendant do not offer the astrology services for financial market prediction which forms the chunk of Plaintiff's services.

(v) The Defendant's consumer base are subscribers most likely to flip channels and watch the astrology channel without the serious intent to look for life predictions. The Plaintiff's customers approach the Plaintiff with the intent to seek astrological guidance in address their specific issues and considering the material on record mostly likely in financial markets.

(vi) The rival services are offered through different trade channels and there is no probability of overlap between the services or of the consumers.

60. Insofar as the contention that the Defendants also provides personalised consultation, there is specific averment by the Defendants that initially the subscribers were provided with the option of phone call consultation which reference services has been discontinued in or around October, 2024 much prior to filing of the suit. Assuming that one to one consultation were being offered by the Defendants, considering the difference in the nature of astrology services offered by the Plaintiff and the Defendants, even accepting that one to one consultation was offered, by itself, is not sufficient to come to a conclusion of similarity in services. The services of an OTT/DTH service provider cannot *prima facie* be considered to be competitive to a personalised astrology consultant.

61. The concept of initial interest confusion test recognizes that the confusion in the minds of the consumers arises at the stage of purchase and at the time of completing the transaction there is no doubt in the minds of customers regarding the origin of goods. To substantiate the initial interest confusion test, Mr. Khandekar would contend that the impugned mark is used over mainstream channels even outside the subscription model which is readily accessible even to those who do not own "TATA Play" set top box or OTT subscription. It is not denied that outside OTT/DTH platform, the Defendant's services are advertised soliciting subscription to their services. However, it is

not a case of services being rendered by Defendants outside the subscription based model. The test which is required to be applied is whether the customer would be confused at the initial stage and would be in a state of transient wonderment, which would apply where the services are rendered through same trade channels. The chances of likelihood of confusion are remote as the Defendant's DTH service is distinct from the personalised astrology services rendered by the Plaintiff. In the case of ***Under Armour Inc vs Anish Agarwal and Another*** (supra), the Appellant therein had placed on record google search screenshots to demonstrate that search results showed products from both the parties for purchase on e commerce platforms. In that case both the parties were conducting sales through identical trade channels i.e. through e-commerce websites. In that facts, the Delhi High Court opined that an customer with average intelligence and imperfect recollection who comes across the respondent's products on any of the e-commerce platforms used by both parties or through other interactive websites may wonder whether there is connection between the two marks and confusion would arise for brief period of time.

62. Dealing with the case of passing off, the assessment of similarity of the rival marks would precede the classic trinity test of (a) goodwill and reputation (b) misrepresentation and (c) damage. As held above,

this Court is of the view that the marks are dissimilar. The case for passing off is therefore terminated at the threshold. However, this Court has gone ahead and considered whether the trinity test stand satisfied. In ***Saga Lifesciences Limited vs Aristo Pharmaceuticals Ltd*** (supra), it was held that it is not necessary that sales have to be in crores of rupees. In ***Century Traders vs Roshan Lal Duggar*** (supra), the Court in the context of passing off action has opined that it is not necessary that the goods should have acquired a reputation for quality under that mark. Accepting the said proposition, there must be material to demonstrate actionable goodwill and reputation, which is required to be protected from being damaged by reason of the use of the impugned mark. The sales turnover relied upon by the Plaintiff is doubtful as the sales turnover is self-attested certificate by the Plaintiff and certifies the sales generated by Maa Astro Duniya Pvt Ltd in respect of Astro Dunia mark. The nexus between the company and the mark has not been explained and the company is not the Plaintiff but the proprietorship firm.

63. The Hon'ble Apex Court in the case of ***Cadila Healthcare Limited*** (supra) has laid down following broad factors to be considered in an action for passing off:

> (a) The nature of the marks i.e. where the marks are word marks or label marks or composite marks i.e. both words and label marks;

(b) the degree of resemblance between the marks, phonetical similarity and hence, similar in idea;

(c) the nature of the goods in respect of which they are used as trade marks;

(d) the similarity in the nature, character and performance of the goods of the rival traders;

(e) the class of the purchasers who are likely to buy the goods bearing the marks they require on their education and intelligence and degree of care they are likely to exercise while purchasing or using the goods;

(f) the mode of purchasing goods or place the order of goods;

(g) any other surrounding circumstances in aspect of dissimilarity between the mark."

64. The Hon'ble Apex Court has held that weightage is to be given to each of the aforesaid factors depending upon the facts of each case. In in the present case, both marks are label marks and as already held above, there is no resemblance in the manner in which the label marks are used. The services of the Defendants are available through subscription model which is not so in the case of the Plaintiff's services. The common field of activity is a relevant consideration in an action for passing off as the same would determine association between the Plaintiff's services and that of the Defendant. Considering that the Plaintiff's substantial consumer base are related to financial markets, it is unlikely that the Plaintiff's consumer base would be confused when

confronted with the Defendant's services which is a common content meant for the masses. Insofar as the misrepresentation is concerned, there is no material on record to come to *prima facie* conclusion of any attempt of misrepresentation or that Defendants have projected its services as something different from what it offers. It is necessary for *prima facie* case to be made out of false representation even if unintended which would lead the public to believe that the goods offered by the Defendants are that of the Plaintiff. The manner in which the Defendant's services are made available to the general public rules out possibility of misrepresentation.

65. In light of above, there is no *prima facie* case made out of infringement of trade mark or passing off for grant of interim injunction. Interim Application stands dismissed.

[Sharmila U. Deshmukh, J.]