Trade Mark Suit No. 3 of 2026

Order below Application - Exh.5:

APPEARANCE:

Mr. Y. V. Butaney, learned Advocate for the Plaintiff
Mr. Chaitanya Nayak, learned Advocate for the Defendant

1.00) The present application is filed by the plaintiff under the provisions of Order-XXXIX, Rule-1 and 2 of the Code of Civil Procedure, 1908 seeking the relief of interim injunction as under:

> "(A) The Hon'ble Court be pleased to restrain the defendant, their partners sister concerns, their associates, authorized persons servants, employees, agents, printers and publishers by an order of permanent injunction from rendering impugned services under impugned mark 'EKDANT' and/or any mark, which may be identical and/or deceptively similar to the plaintiff's registered trade mark 'EKDANT' and be restrained from committing an act of infringement of the plaintiff's registered trade mark 'EKDANT'.
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> (B) The Hon'ble Court be pleased to restrain the defendant, their partners sister concerns, their associates, authorized persons servants, employees, agents, printers and publishers by an order of permanent injunction from using impugned mark 'EKDANT' and/or any other trade mark, which may be identical with and/or deceptively similar with the plaintiff's said mark 'EKDANT' and restrain them from rendering impugned services by using impugned mark 'EKDANT' in any manner and thereby, restrain them from committing an act of passing off and enable others to pass off impugned services as of said services of the plaintiff with impugned mark 'EKDANT' and restrain them from sabotaging the immense reputation and goodwill of the said mark 'EKDANT' of the plaintiff.

(C) A decree may be pleased passed against the defendant and their proprietaries, which can be executed against the defendant and in favour of the plaintiff for the declaration that the plaintiff is only entitled to use the trademark ‘EKDANT’ and declare that only the plaintiff is entitled to render services under the trademark ‘EKDANT’.

(D) The defendant be ordered to produce accounts for rendering services to his customers/patients under the mark ‘EKDANT’ and be directed to pay the profit whatsoever derived from rendering services under the illegal use of mark to the plaintiff with interest at the rate of 18% per annum from the date of filing of this suit till realization. The Hon'ble Court be pleased to direct the defendant to pay the damages for the loss of reputation and goodwill, which may deem fit and proper to this Hon'ble Court in the interest of justice.

(E) The Hon'ble Court be pleased to direct the defendant to pay the amount of future loss and damages for their illegal activities for using impugned mark ‘EKDANT’ with running interest at the rate of 18% per annum to the plaintiff from the date of the suit till realization.

(F) The Hon'ble Court be pleased to order the defendant to pay the cost of the present proceeding and a heavy exemplary cost may be awarded to the plaintiff.

(G) Any other and further relief, that may be deemed fit and proper, looking to the facts and circumstances of the case, may be granted in favour of the plaintiff.

2.00) The facts, as emerging from the pleadings of the plaintiff, are as under:

2.01) The plaintiff – Ekdant Multispeciality Dental Care Clinic is a sole partnership firm which was incorporated on 15.05.2015 and the plaintiff is the owner of the trademark "Ekdant Multispeciality Dental Care Clinic" with the prominent feature of the mark "Ekdant" (hereinafter referred to as the said mark). It has been averred that the trademark “Ekdant”, whose exclusive proprietor is the plaintiff, has been in the commercial

existence since 15.05.2015; that the plaintiff's existence is well established and the goodwill vested on the plaintiff is immense across their concerned filed because of unhindered presence in the market since long and hence, the plaintiff has gained immense reputation which has still been unbridled by any entity in the entire nation; that the plaintiff is engaged in the profession of providing services with respect to Dental Clinic, Dental Treatment and medical services and has been continuously running the profession with the brand name and trade mark "Ekdant" since 15.05.2015; that the exclusivity with respect to the mark is significant in medical field in order to protect the common law rights of patients at large, who are innocently misguided by the services rendered by infringers; and, that the plaintiff has issued notice in various newspaper warning people and other entities to restrict the use of the mark which is same or identical, deceptively similar or even sailing closely to the mark of plaintiff. It is averred that the trademark registration of the plaintiff in relation to the said mark is Ekdant Multispeciality Dental Care Clinic in Class 05 and it is being used since 15.05.2015; that Trade Mark Application No.3028683 was filed on 10.08.2015 by the plaintiff and status of the said trademark is registered and valid up to 10.08.2035; that the revenue of the plaintiff during the financial year 2015-16 was Rs.8,70,108/-, during the year 2016-17, it was Rs.15,16,848/-, during the year 2017-18, it was Rs.44,75,960/-, during the year 2019-20, it was Rs.35,91,255/-, during the year 2020-21, it was Rs.31,18,644/-, during the year 2021-22, it was Rs.41,59,556/-, during the year 2022-23, it was Rs.41,28,271/-, during the year 2023-24, it was

Rs.54,56,143/- and during the year 2024-25, it was Rs.53,72,235/-.

2.02) The plaintiff has averred that recently in the second week of October 2025, the plaintiff came to know about the existence of the defendant through random research in the market; that the defendant has adopted the mark Ekdant Dental Clinic (hereinafter referred as "impugned mark"), which is exactly the same in comparison to the registered trademark of the plaintiff, i.e. Ekdant; that the prominent and non-descriptive feature of the impugned trademark is Ekdant, which is exactly the same in comparison to the said mark; that the defendant is also indulged in providing Dental services as per the depiction outside the clinic of the defendant and the defendant's own admission in the reply to the legal notice issued by plaintiff; that the defendant was in complete knowledge of the existence of the plaintiff's trademark as both of them have their principal place of business in Surat City; that the defendant has deliberately adapted the impugned mark as it was strikingly similar to that of the registered trademark of the plaintiff, because of which, the defendant could encash all the goodwill, reputation and trust which is vested on the said mark of the plaintiff. It is specifically averred that it is completely illegal to violate statutory rights vested on an entity for personal gains as the original right of the said gains belongs to the original adaptor, i.e. plaintiff. The plaintiff has specifically averred that the defendant's practice is only in presence because of innocent clients who are diverted to imitator of the plaintiff's mark; and, that the defendant has no clients/patients of his own and is actually plaintiff's

clients/patients who are misguided by defendant's mala fide practice; that the defendant has no reason of adoption of the impugned mark; and, that the defendant has just cloned the well-known mark of the plaintiff without even applying any brain of his own and such conduct of the defendant cannot be a mere coincidence, rather it is a well-planned strategy to ride on the goodwill of the plaintiff and grab the market illegally which is already been set and established by the plaintiff because of their consistent hard work. The plaintiff has further averred that immediately upon the knowledge of the existence of impugned mark of the defendant, he had sent a cease and desist notice through R.P.A.D. on 13.10.2025 to the defendants calling upon him to immediately cease and desist the use of impugned mark which is completely similar in comparison to the registered trademark of the plaintiff; that the plaintiff had through the notice directed the defendant to withdraw their use of the impugned mark from the market; that the defendant had given the reply to the said notice on 24.10.2025 whereby he has denied to restrict the use of the impugned mark; that the plaintiff in reply to the same notice, had sent a rejoinder notice wherein the plaintiff has specifically stated that the defendant shall restrain themselves from using the impugned mark or else there shall be strict legal actions against the same; that the defendant subsequently after receiving the rejoinder notice, curtailed the use of the impugned mark in relation to the services rendered for some duration making an impression that he has stopped using the impugned mark, but, to utter shock and surprise of the plaintiff, he had received information from the market that the defendant has

restarted using the impugned mark and is still rendering the services with the impugned mark without issuing invoices; that the defendant rendering impugned services under the impugned mark without issuing the invoices to the patients is illegal and not at all tenable under the law; that balance of convenience lies in favour of the plaintiff as he is facing hardships as mentioned earlier on daily basis because of malpractices conducted by the defendant; and, that the irreparable injury is likely to be caused more to the plaintiff as compared to the defendant. Therefore, the plaintiff has filed the suit for declaration and perpetual injunction on the ground of infringement and passing off the registered trademark of the plaintiff.

3.00) *Per contra*, the defendant has remained present before the Court and strongly objected the suit of the plaintiff by way of filing the written statement at Exh.17. The main contentions advanced in the written written statement are to the effect that the plaintiff has miserably failed to satisfy the settled and mandatory ingredients required for grant or continuation of temporary injunction under Order XXXIX Rules 1 and 2 CPC, namely, *prima facie* case, balance of convenience, and irreparable loss and injury. It is a settled proposition that all three ingredients must co-exist simultaneously and absence of even one disentitles the plaintiff from equitable relief. The Hon'ble Supreme Court in Supreme Court of ***India Skyline Education Institute (India) Pvt. Ltd. v. S.L. Vaswani, (2010) 2 SCC 142***, has categorically held that grant of injunction depends upon satisfaction of the triple test of prima facie case, balance of

convenience, and irreparable injury. It has been vehemently contended that the plaintiff admittedly does not possess any standalone registration for the word "Ekdant" *per se;* the registration relied upon by the plaintiff is only a composite/device mark; that under Section 17 of the Trade Marks Act, rights arising from a composite mark are confined to the mark as a whole and no exclusivity can be claimed over isolated components thereof; that the plaintiff is impermissibly dissecting the composite mark and isolating the word "Ekdant" to claim monopoly over the same. Relying upon the judgement of the Hon'ble Supreme Court in the case of ***Pernod Ricard India Pvt. Ltd. v. Karanveer Singh Chhabra, 2025 SCC OnLine SC 1701,*** it has been contended that as per the anti-dissection rule composite marks are required to be considered as a whole and not by splitting individual components; and, that the Hon'ble Supreme Court has further recognized that the anti-dissection rule has statutory foundation under the Trade Marks Act itself. Similarly, referring to the judgement in the case of ***Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories - AIR 1965 SC 980***, it has been contended that the Hon'ble Supreme Court has recognized that where the common portion of the mark is descriptive or *publici juris*, exclusivity cannot ordinarily be claimed over such portion alone and the plaintiff has deliberately suppressed from this Hon'ble Court that the registration relied upon by the plaintiff itself contains the condition: "Registration shall give no right to the exclusive use of the descriptive matter" and the said condition directly negates the

plaintiff's claim of exclusivity. The defendant has furnished the differences between the rival marks as under:

Plaintiff' Mark	**Defendant's Mark**
Ekdant Multispecialty Dental Care Clinic (Device Mark)	**Ekdant Dental Care**
Nature of Mark Composite Mark (Word + Minor Device)	Composite Mark (Word + Device) Both Marks must be compared as a whole (anti-dissection rule)
Word Element "Ekdant Multispecialty Dental Care Clinic"	"Ekdant Dental Care" (+ regional script) Common word "Ekdant" is non-distinctive and culturally derived; no monopoly
Word Element Long, Descriptive Phrase	Short, Bold, Concise, Structural dissimilarity creates different commercial impression
Device / Logo Small, Stylized Tooth integrated into lettering	Prominent standalone tooth with circular swoosh, Device is entirely different, → key distinguishing factor
Visual Impression Minimal, Light, Text-oriented	Bold, Graphic-heavy, Signage-oriented, overall visual recall is completely distinct
Colour Scheme Red + Teal/Greenish-blue	Blue + Red with gradient/swoosh, Different trade dress → reduces confusion
Layout & Presentation Linear, Uniform text flow	Layered design + logo emphasis + additional elements, Distinct arrangement and hierarchy

Descriptive Elements "Multispecialty", "Dental Care Clinic"	"Dental Care" All are generic/descriptive, incapable of exclusivity
Conceptual Meaning Refers to dental services (generic)	Same field but differently expressed visually, Concept alone cannot create monopoly
Phonetic Similarity "Ekdant" common	"Ekdant" common, Phonetic similarity alone insufficient, especially in device marks
Trade Dress Simple Clinic Branding	Distinct professional signage branding, Trade Dress is clearly distinguishable
Consumer Perception Seen as descriptive clinic name	Seen as branded dental identity, No likelihood of confusion among prudent consumers
Mode of Purchase Healthcare Services (careful selection)	Same consumer exercise, higher degree of caution
Likelihood of Confusion Alleged by Plaintiff	Denied, No confusion due to dominant visual differences
Adoption Claimed prior use	Independent creation, Honest adoption, No mala fide intent
Prior User Element Not established	No misrepresentation, no damage, no continuation of the above registered mark shown

It has been further contended that once the statute itself restricts exclusivity, no *prima facie* right survives in favour of the plaintiff. Adverting to the judgement of Hon'ble Bombay High Court in the case of ***Elder Project Limited v. Elder Neutraceuticals Private Limited, 2026 SCC Online Bom 1855,*** it has been contended that suppression of material facts while obtaining injunction disentitles a party from equitable relief and such injunction is liable to be vacated forthwith. It has been

further contended that the said word is *publici juris* and it is commonly used in trade and business, including dental and healthcare establishments; that the plaintiff has failed to establish any secondary distinctiveness exclusively associated with the plaintiff; that the Trademark law does not permit monopolization of public vocabulary or common expressions; that the Hon'ble Supreme Court in ***Kaviraj Pandit Durga Dutt Sharma v Navaratna Pharmaceutical Laboratories*** *(supra)* has recognized that where expressions are common, descriptive, or associated with trade usage, exclusivity cannot ordinarily be granted; that the plaintiff is effectively attempting to monopolize a public expression, which is impermissible in law; that the plaintiff's trademark application itself faced objections under Sections 9(1)(b) and 11(1) of the Trade Marks Act and the Registrar had specifically objected that: (a) The mark lacked inherent distinctiveness; (b) Similar marks and prior registered marks are already existed on the Register; (c) Likelihood of confusion existed with earlier marks; that this itself demonstrates that the field is crowded, similar marks have already existed and the plaintiff was not the first adopter, and thus, the mark lacks inherent distinctiveness.

It has been further contended that in reply to the Examination report, the plaintiff has himself specifically contended before the Trademark Registry while giving justification about the earlier published cited mark and registered mark that: (a) No deceptive similarity exists; (b) No confusion is likely; (c) The marks are visually and phonetically distinguishable; and, (d) Distinctiveness lies in the artistic

label/device. It is, therefore, contended that having taken such a stand before the statutory authority, the plaintiff cannot now take a diametrically opposite stand before the Hon'ble Court; that the plaintiff cannot approbate and reprobate simultaneously; that the plaintiff is estopped from alleging confusion after previously denying the same before the Registry; that the defendant's mark is, "Ekdant Dental Care" and the plaintiff's alleged mark is, "Ekdant Multispeciality Dental Care Clinic" with logo; that the rival's mark differ substantially in its structure, layout, device, artistic representation, trade dress and in overall commercial impression. Referring to the judgement of the Hon'ble Gujarat High Court in ***Mangrol Oil Mill v. Vikas Oil Industries, 2026 SCC OnLine Guj 559*** it has been contended that it has been held in the said judgement that marks are to be compared as a whole, meticulous splitting of marks is impermissible; overall structural and phonetic impression is the governing test. The Hon'ble High Court has further held that in a crowded field of marks, minor differences are sufficient to distinguish rival marks. It is, therefore contended that the plaintiff is selectively isolating the word "Ekdant" while ignoring settled principles governing comparison of marks; the plaintiff has failed to establish reputation, misrepresentation and damage; that the Hon'ble Supreme Court in the case of ***Kaviraj Pandit Durga Dutt Sharma*** (*supra*) has recognized that packaging, get-up, surrounding circumstances, and manner of use are all relevant in determining passing off and deceptive similarity. It has been contended that the defendant's clinic operates independently and honestly; that both the parties are conducting business with their

name and individual identity identifying the services associated with the goodwill of the Doctor itself; that it is commonly practiced in India that the doctor services are mainly obtained after due diligence and scrutiny and in connections with the references; that the average consumer in this case is not going to be cheated or passed off by "Ekdant" trademark; that the plaintiff has utterly failed to establish continuous, consistent, and exclusive use of the alleged mark as applied before the Trade Marks Registry; that a bare perusal of the documents annexed with the plaint and injunction application clearly demonstrates that the plaintiff is not using the very same logo/device mark which has been applied before the Trademark Registry; that the mark as applied before the Registry, the mark allegedly used in the market, the mark reflected in brochures, and the mark currently displayed by the plaintiff are materially different from each other. It has been contended that the plaintiff, in fact, is presently using an entirely different logo/device mark as reflected in the plaintiff's own compilation of documents annexed with the injunction application; that the invoices, sales documents, brochures, promotional materials, and advertisements relied upon by the plaintiff scarcely demonstrate use of the alleged applied device/logo markl; on the contrary, the majority of invoices merely contain the expression "Ekdant" in plain textual form without any reference to the alleged registered or applied artistic device/logo; therefore, the invoices relied upon by the plaintiff do not establish goodwill or reputation in respect of the alleged applied logo/device mark; at the highest, the invoices merely indicate commercial transactions under a trading name, but do

not establish distinctiveness of the applied mark, exclusive association of the logo/device, consumer recognition of the alleged artistic representation and goodwill attached to the alleged composite mark. It is settled law that goodwill must be specifically established in relation to the very mark sought to be enforced. The Hon'ble Gujarat High Court in ***Mangrol Oil Mill v. Vikas Oil Industries, 2026 SCC OnLine Guj 559***, while examining rival marks and documentary evidence, has specifically held that where the actual market usage materially differs from the registered mark, the claim of deceptive similarity and exclusivity becomes substantially weakened. The Hon'ble High Court has further observed that the documents produced must clearly establish continuous and consistent use of the registered mark itself. It has been further contended that the plaintiff's own documents reveal material inconsistencies in the alleged turnover figures; that the turnover figures now placed before this Hon'ble Court are materially different from the turnover figures previously disclosed before the Trade Marks Registry during prosecution of the trademark application; that such inconsistencies strike at the root of the plaintiff's claim of goodwill, reputation and prior use; that the plaintiff has failed to explain the discrepancy in turnover figures, inconsistency in mark usage, absence of continuous use of the alleged device mark and divergence between the Registry records and present pleadings; that the entire attempt of the plaintiff appears to be a calculated and *mala fide* exercise to artificially create evidence of goodwill for the purposes of obtaining interim relief from this Hon'ble Court; that the plaintiff is attempting to use selective and

inconsistent documents to create an illusion of distinctiveness and exclusivity where none exists and therefore, such conduct amounts to clear abuse of the process of law. It has been vehemently contended that a party seeking equitable relief is required to approach the Court with utmost candour, transparency and *bona fide*; that the plaintiff, having relied upon inconsistent and contradictory material while simultaneously suppressing material facts, is disentitled from any equitable protection; that the present proceedings are, therefore, nothing but an attempt to secure monopolistic rights over a common/*publici juris* expression by misuse of judicial process and equitable jurisdiction of this Hon'ble Court; that the plaintiff has failed to establish itself as the first adopter or honest proprietor of the mark; that the examination report itself demonstrates existence of earlier similar marks already on the Register; that the plaintiff has adopted the mark despite existence of earlier marks; that the plaintiff itself is, therefore, a subsequent adopter and a subsequent adopter cannot seek equitable injunction against another *bona fide* user while claiming monopoly over a common expression; that there are several third party users using similar expressions containing "Ekdant" and allied variations; and, that the plaintiff has selectively proceeded only against the defendant and such widespread usage demonstrates that the mark is diluted, the mark is weak, the mark is common to trade, and, no exclusivity survives. It has been contended that the injunction has severely prejudiced the defendant and affected the defendant's professional livelihood; that the defendant is carrying on independent dental practice honestly and *bona fide* and have

invested sufficient amount; and grant or continuation of injunction would cause grave hardship and irreparable prejudice to the defendant; and on the contrary, the plaintiff will suffers no irreparable prejudice, particularly in absence of exclusivity. The Hon'ble Supreme Court in the case of ***Skyline Education Institute (India) Pvt. Lad*** (*supra*) held that unless a strong *prima facie* case is established, injunction ought not to be granted merely because a mark is registered; that the plaintiff had admittedly issued a cease-and-desist notice to the defendant and the defendant duly replied within the stipulated period denying all allegations; that despite having full knowledge of the defendant's activities, the plaintiff has failed to immediately initiate proceedings and has not explained the delay in filing the present suit and injunction application; that the plaintiff has consciously permitted the defendant to openly operate and grow its business and has now, after the defendant established goodwill and market presence, attempted to restrain the defendant by obtaining an injunction through suppression and selective pleadings; that the conduct of the plaintiff clearly demonstrates acquiescence and an attempt to crush a legitimate competitor by claiming monopoly over a *publici juris* expression, a god/religious name and a mark common to trade; that the present proceedings are, therefore, a misuse of trademark law to create illegal market monopoly rather than protection of any genuine proprietary right. The Hon'ble Supreme Court has, in the case of ***Skyline Education Institute (India) Pvt. Ltd. v. S.L. Vaswani, (2010) 2 SCC 142***, held that injunction ought not to be granted where the plaintiff fails to establish distinctiveness and strong

prima facie case, particularly when the balance of convenience favours continuation of the defendant's ongoing business. It is, therefore, contended that the plaintiff is not entitled to any equitable relief and the injunction application is required to be dismissed; that the present proceedings are a calculated attempt to monopolize a *publici juris* and non-distinctive expression; that the Trademark law cannot be used as a tool for market elimination; that the plaintiff seeks to enlarge the scope of its registration beyond what is statutorily permissible; and that grant of injunction in such circumstances would amount to conferring unlawful monopoly over a common expression. Therefore, in view of the aforesaid submissions, it is most respectfully prayed before the Hon'ble Court to dismiss the plaintiff's application under Order XXXIX Rules 1 and 2 CPC and award costs in favour of the defendant and pass such further orders as deemed fit in the interest of justice.

4.00) Heard Mr. Y. V. Butaney, learned Advocate for the Plaintiff and Mr. Chaitanya Nayak, learned Advocate for the Defendant. Perused the written arguments submitted by the learned Advocates for the parties at Exhs.15 and 17.

4.01) Mr. Y. V. Butaney, learned Advocate for the plaintiff, has vehemently contended that the plaintiff is using his trademark "Ekdant" since the year 2015 and it is the dominant mark used widely in different magazines. He has further contended that the Registrar has granted right on the dominant feature of the mark and imposed a condition for no exclusive use

of descriptive matter i.e. Multispeciality Dental Care Clinic. He has contended that the defendant has admitted the descriptive matter of the plaintiff's mark and the phonetic similarity of the rival marks are completely same. He has further contended that when the defendant has not denied prior use of the mark since 2015, as per the judgement in the case of ***Century Traders vs. Roshan Lal Duggar & Co. - AIR 1977 Delhi 250 (DB)***, the plaintiff has proved that he is prior user of his trademark. Mr. Butaney has further contended that the plaintiff has highlighted dominant portion of the mark "Ekdant" on which there are exclusive rights, as mentioned by the Registrar. He has further contended that the plaintiff has not suppressed any material fact, as alleged by the defendant, and on the contrary, the examination report and reply are available on the public domain. He has contended that the reply to the examination report is not relevant as per the judgement in the case of ***Telecare Network India Pvt. Ltd. vs. Asus Technology Pvt. Ltd. - CS (Comm) No.731/2017*** and therefore, it cannot be said that the plaintiff is estopped from raising the dispute as to deceptive similarity of his mark. He has further contended that there is no any dispute on the proposition of law that a trademark has to be seen as a whole, but, it is equally settled that the Court can while examining similarity in rival marks look into the dominant/essential part of the trademark and in this case, the dominant mark is "Ekdant" which is deceptively similar in the defendant's mark. Mr. Butaney has further contended that Section 17(2) of the Act will not come to the help of the defendant and on the contrary, the said provision envisages that the trademark puts bar on a mark as a whole when

there is common to the trade word i.e. Multispeciality Dental Care Clinic mentioned in the trademark of the plaintiff. He has further contended that the plaintiff has acquired distinctiveness in the subject mark "Ekdant" and Section 17 of the Act on the contrary favours the plaintiff when it is to be read as a whole.

Adverting to the judgements in the cases of ***South India Beverages Pvt. Ltd. vs. General Mills Marketing INC - FAO (OS) No.389/2014 - Delhi High Court; Chacha Saree Bazar Pvt. Ltd. vs. Chacha Cloth House - FAO (Comm) No. 217/2025 - Delhi High Court; Stiefel Laboratories vs. Ajanta Pharma Ltd. - 211 (2014) DLT 296***, and ***K. R. Chinna Krishna Chettiar vs. Shri Ambal & Co.***, Mr. Butaney has contended that the dominant feature of the rival marks is "Ekdant", which is accepted by the defendant and therefore, there exists no difference within the dominant feature of the mark and protection is required to be given to the plaintiff against misuse of the dominant portion of the mark. He has further contended that the plaintiff has established on record through balance sheets that he has been extensively using his mark since the year 2015 and he has also earned goodwill and prestige in the market.

Mr. Butaney has further contended that the plaintiff has established prima facie case in his favour, balance of convenience is also in his favour and irreparable injury is likely to be caused more to the plaintiff than the defendant. He has further contended that as the plaintiff is using his trademark since 2015, he has established goodwill and now if the defendant is not restrained from using the said mark, then, it is likely to hurt and

affect the business and services of the plaintiff inasmuch as the patients will be diverted from the plaintiff. Due to usage of the mark of the plaintiff by the defendant, the patients may believe the services of the defendant to be that of the plaintiff and it is his branch office. He has, therefore, submitted that proof of actual damage or fraud is unnecessary in passing off action. He has further contended that the plaintiff and defendant are involved in providing medical services which is a service rendered on the basis of trust and innocent patients are likely to be misguided and harmed if the injunction is not granted. It would be a question of mistreatment and treatment with lack of experience and facility which may costs lives of the patients if there is any mishap on the name of "Ekdant" and the liability will be heavier on the shoulders of the plaintiff because of any misuse of the said mark by the defendant.

In support of his submissions, Mr. Butaney has relied upon the judgements in the cases of ***Gujarat Bottling Co. Ltd. vs. Coca Cola Co. & Ors. - AIR 1995 SC 2372; Vinita Gupta vs. Amit Arora - CS (Comm) No.359/2022 - Delhi High Court; South India Beverages Pvt. Ltd. vs. General Mills Marketing INC - FAO (OS) No.389/2014 - Delhi High Court; Chacha Saree Bazar Pvt. Ltd. vs. Chacha Cloth House - FAO (Comm) No. 217/2025 - Delhi High Court; Mangalore Ganesh Bidi Works vs. District Judge Munsif City - 2005 (3) AWC 2097; Zenith Dance Institute Pvt. Ltd. vs. Zenith Dance & Music - CS (Comm) No.36/2021 - Delhi High Court; Telecare Network India Pvt. Ltd. vs. Asus Technology Pvt. Ltd. - CS (Comm) No.731/2017 - Delhi High Court.***

In the end, Mr. Butaney has contended that as there is clear infringement of the dominant mark of the plaintiff i.e. "Ekdant", *prima facie* case is made out by the plaintiff and the aspects of balance of convenience and irreparable injury are also in favour of the plaintiff and therefore, the present application may be allowed and the defendant and/or his agents/persons may be restrained from using the said mark, as prayed for.

4.02) *Per contra,* Mr. Chaitanya Nayak, learned Advocate for the plaintiff, has vehemently contended that the plaintiff has failed to satisfy the triple test of *prima facie* case, balance of convenience and irreparable injury, which is pre-requisite for grant of temporary injunction as per the judgement of the Hon'ble Supreme Court in the case of ***Skyline Education Institute (India) Pvt. Ltd. vs. S. L. Vaswani - (2010) 2 SCC 142***. He has further contended that the plaintiff has no exclusive right over the word "Ekdant" inasmuch as he does not possess standalone registration for the word "Ekdant" *per se*; that the trademark of the plaintiff is only a composite/device mark and as per Section 17 of the Trade Marks Act, rights arising from a composite mark are confined to the mark as a whole and no exclusivity can be claimed over isolated components thereof. Mr. Nayak has further contended that the plaintiff is impermissibly dissecting the composite mark and isolating the word "Ekdant" to claim monopoly over the same.

Adverting to the judgment in the case of ***Pernod Ricard India Pvt. Ltd. vs. Karanveer Singh Chhabra - 2025***

SCC Online SC 1701, Mr. Nayak has contended that the anti dissection rule has to be applied and the composite marks are required to be considered as a whole and not by splitting individual components. Relying upon the judgement in the case of ***Kaviraj Pandit Durga Dutt Sharma vs. Navaratna Pharmaceuitcal Laboratories - AIR 1965 SC 980,*** Mr. Nayak has further contended that where the common portion of the mark is descriptive or *publici juris*, exclusivity cannot ordinarily be claimed over such portion alone. He has contended that the word "Ekdant" is publici juris and commonly used in trade and business, including dental and healthcare establishments, as the word "Ekdant" is a religiously common expression associated with Lord Ganesh. Moreover, the plaintiff has failed to establish any secondary distinctiveness exclusively associated with him. He has contended that the Trademark Law does not permit monopolization of public vocabulary or common expressions and the plaintiff is trying to monopolize a public expression which is not permissible under the law.

Mr. Nayak has further contended that the registration of trademark of the plaintiff itself contains the condition that it shall give no right to the exclusive use of the descriptive matter, which directly negates the plaintiff's claim of exclusivity. Once the statute itself restricts exclusivity, no *prima facie* case is made out in favour of the plaintiff. He has contended that since the plaintiff has suppressed the said material fact from the Hon'ble Court, he is not entitled to the equitable relief as it is settled principle of law that one who seeks the equity must come before the Hon'ble Court with clean hands. In this regard, Mr. Nayak has

placed reliance on the judgement of the Hon'ble Bombay High Court in the case of ***Elder Prroject Limited vs. Elder Neutraceuticals Private Limited - 2026 SCC Online Bom 1855.***

Switching over to the facts of the plaintiff's case, Mr. Nayak has contended that the plaintiff's trademark application itself has faced objections under Sections 9(1)(b) and 11(1) of the Trade Marks Act and the Registrar has specifically objected that the mark lacked inherent distinctiveness; similar marks and prior registered marks are already existed on the Register; and, likelihood of confusion existed with earlier marks. He has, therefore, contended that the field is crowded and similar marks are already existing in the market and hence, the plaintiff cannot be said to be the first adopter of the mark and the mark lacks inherent distinctiveness. Adverting to the plaintiff's reply to the Examination Report before the Registry, Mr. Nayak has vehemently contended that while giving justification about earlier published cited mark and registered mark, the plaintiff has contended that no deceptive similarity exists, no confusion is likely, marks are visually and phonetically distinguishable and distinctiveness lies in the artistic label/device. Thus, once having take such stand by the plaintiff, now, he cannot take a diametrically opposite stand before the Hon'ble Court and the plaintiff cannot approbate and reprobate simultaneously. He has contended that the plaintiff is estopped from alleging confusion after previously denying the same before the Registry.

Mr. Nayak has further contended that there is no deceptive similarity in the mark of the defendant and the rival

marks differ substantially in structure, layout, device, artistic representation, trade dress, and overall commercial impression. Referring to the judgement of Hon'ble High Court of Gujarat in the case of ***Mangrol Oil Mill vs. Vikas Oil Industries - 2026 SCC Online Guj 559***, he has submitted that marks are to be compared as a whole; meticulous splitting of marks is impermissible; and, overall structural and phonetic impression is the governing test. He has further submitted that Hon'ble High Court has further held that in a crowded field of marks, minor differences are sufficient to distinguish rival marks and therefore, the plaintiff is selectively isolating the word "Ekdant" while ignoring settled principles governing comparison of marks. There are multiple third party users using similarly expressions containing "Ekdant" and allied variations, which negates exclusivity. It has been further contended that the mark of the plaintiff is diluted, mark is weak, mark is common to trade and therefore, no exclusivity survives.

Mr. Nayak has further contended that the plaintiff has failed to establish reputation, misrepresentation and damage inasmuch as no complaint from any a patient or member of public is produced, no dishonest intention or misrepresentation is established against the defendant. It has been further contended that the plaintiff has failed to establish continuous, consistent and exclusive use of the alleged mark as applied before the Trademark Registry; that a bare perusal of the documents produced by the plaintiff shows that he is not using the very same logo/device mark and he is using entirely different logo/device

mark; that the invoices merely contain the expression "Ekdent" in plain textual form without any reference to the alleged registered or applied artistic device logo and hence, the invoices of the plaintiff do not establish goodwill or reputation in respect of the alleged applied logo/device mark. The turnover figures shown before the Trademark Registry and disclosed in the Hon'ble Court are materially different and such inconsistencies strike at the root of the plaintiff's claim of goodwill, reputation and prior use.

Mr. Nayak has further contended that the defendant's clinic operates independently and honestly; that both the parties are conducting business with their name and individual identity identifying the service associated with the goodwill of the doctor itself; that it is commonly practised in India that the doctor services are mainly obtained after due diligence and scrutiny and in connections with the references; and, that the average consumer is not going to be cheated or passed off by Ekdant Trademark.

Mr. Nayak has strenuously contended that balance of convenience is not in favour of the plaintiff as granting or continuing it would severely prejudice the defendant and his professional livelihood. Since the defendant is carrying on independent dental practice honestly and *bona fide* and he has also invested huge amount in his clinic, grant of or continuing of injunction would cause grave hardship and irreparable prejudice to the defendant and on the contrary, the plaintiff will not suffer any harm or injury, more particularly in absence of exclusivity. On the ground of delay, acquiescence and mala fide conduct of the plaintiff, Mr. Nayak has further contended that the plaintiff's

claim has to fail inasmuch as after receipt of the reply of the defendant to the cease and desist notice, the plaintiff has approached the Hon'ble Court after long time, and more particularly, when the defendant has openly operated and grown his business and established his goodwill in the market. Since the present proceedings are an attempt to create illegal monopoly of a *publici juris* and non-distinctive expression, grant of injunction would amount to conferring unlawful monopoly over a common expression. He has, therefore, urged to dismiss the present application of injunction filed by the plaintiff.

5.00) Based upon the averments made in the application and the written statement filed by the defendants, the following issues are framed for deciding this interim injunction application:

ISSUES

(i) Whether the plaintiff proves that he has made out a *prima facie* case in his favour?

(ii) Whether the plaintiff proves that balance of convenience is in his favour?

(iii) Whether the plaintiff proves that he would suffer irreparable injury which cannot be compensated in terms of money, if interim relief, as prayed for, is not granted in his favour?

(iv) What order?

5.01) The answers to the above issues are as under:

(i) In the negative.

(ii) In the negative.

(iii) In the negative.

(iv) As per final order.

::REASONS FOR DECISION::

6.00) The reasons for arriving at the findings of the above issues are given hereinafter.

ISSUES NOS.1 TO 3:

7.00) In order to avoid repetition of facts and for the sake of convenience, all the Issues are deliberated hereinafter commonly.

7.01) Before deliberating upon the aspects of *prima facie* case, balance of convenience and irreparable injury, it would be apt, just and proper to advert to the statutory provisions made in the Trade Marks Act, 1999. First of all, the definitions of "deceptively similar", "mark", "registered trade mark" and "trade mark", which are given in Section 2(h), 2(m), 2(zb), are important and therefore, they are extracted herein below:

> "2. Definitions and interpretation. - (1) In this Act, unless the context otherwise requires, -
>
> (h) "deceptively similar" - A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion;
>
> (m) "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral shape of goods, packaging or combination of colours or any combination thereof;

> (w) "registered trade mark" means a trade mark which is actually on the register and remaining in force;
>
> (zb) "trade mark" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and, -
>
> (i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and
>
> (ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark;

Likewise, Section 9 relates to absolute grounds for refusal of registration and it bars registration of trademarks that are deceptive, non-distinctive or commonly used in trade. However, it also provides for an exception where such marks have acquired distinctiveness through prolonged and exclusive use - commonly referred to as having acquired a "secondary meaning".

Section 11 pertains to relative grounds for refusal of registration and it prohibits registration of marks identical or similar to earlier marks for identical or similar goods or services, where a likelihood of confusion exists. It further extends protection to well known trademarks, even across dissimilar goods or services, thereby recognizing the doctrine of dilution.

Section 15 relates to registration of parts of trade marks and of trade marks as a series and the condition provided there is that the differences between them do not materially affect their identity.

Moreover, Section 17 provides for effect of registration of parts of a mark and it clarifies that exclusive rights are granted over the mark as a whole and it also ensures that generic or non-distinctive elements within a composite mark are not monopolized individually. Section 27 contemplates no action for infringement of an unregistered trade mark and it recognizes the common law remedy of passing off, thereby ensuring that rights in an unregistered trademark can still be protected based on prior use. Section 28 speaks of rights conferred by registration, Section 29 provides for infringement of registered trade mark, and Section 135 envisages relief in suits for infringement or for passing off.

7.02) Now, keeping in mind the aforesaid statutory provisions and before proceeding further to analyse the facts of the present case so as to determine prima facie case, it is essential to refer to the settled proposition of law laid down by the Hon'ble Supreme Court in the case of ***Pernod Ricard India Private Limited vs. Karanveer Singh Chhabra - 2025 SCC Online 1701***. Hon'ble Supreme Court in the said case has discussed at length various facets of trade mark law and made the following observations, which are relevant and important:

> "29. Before delving further, it is important to note that a passing off action is a common law remedy designed to protect the goodwill and reputation of a trader against misrepresentation by another, which causes or is likely to

cause confusion among consumers. As observed by James L.J, in **Singer Manufacturing Co v. loog – 1880 18 Ch.D. 395, p.412** "no man is entitled to represent his goods as being the goods of another man". A passing off action applies to both registered and unregistered marks, and is rooted in the principle that one trader should not unfairly benefit from the reputation built by another. In contrast, an action for trademark infringement is a statutory remedy under the Trade Marks Act, 1999 available only in relation to registered trademarks. It is intended to safeguard the exclusive proprietary rights that registration confers.

29.1. A key distinction between the two lies in the requirements of proof. In an infringement action, the plaintiff is not required to establish the distinctiveness or goodwill of the mark - registration, by itself, affords the right to seek protection. If the impugned mark is shown to be identical or deceptively similar to the registered mark, no further evidence of confusion or deception is necessary. However, in a passing off action, the plaintiff must prove: (i) the existence of goodwill or reputation in the mark, (ii)a misrepresentation made by the defendant, and (iii)a likelihood of damage to the plaintiff's goodwill.

29.2. While an intent to deceive is not a necessary element in either action, passing off requires proof of a likelihood of confusion or deception. It is well settled that actual deception or damage need not be proved - the test is whether confusion is probable in the mind of the average consumer due to the similarity in the marks or the overall get-up of the goods.

29.3. Another key distinction is that in a passing off action, the defendant's goods need not be identical to those of the plaintiff - they may be allied or even unrelated, provided the misrepresentation is such that it affects or is likely to affect the plaintiff's business reputation. In contrast, infringement requires that the unauthorised use relate to the same or similar goods or services for which the trademark is registered.

29.4. Additionally, in an infringement suit, it is not necessary for the plaintiff to establish use of the mark; even a registered proprietor who has not commenced use can sue for infringement. However, in a passing off action, the plaintiff must demonstrate prior and continuous use, and that the mark has acquired distinctiveness in the minds of the public.

29.5. Thus, while both actions seek to prevent unfair competition and protect against consumer confusion, an action for infringement offers broader statutory protection based solely on registration and ownership. In contrast, passing off is grounded in equitable principles and imposes a

higher evidentiary burden to safeguard commercial goodwill under common law.

APPLICABILITY OF LEGAL PRINCIPLES

30. We shall now proceed to apply the legal principles governing trademark infringement and passing off to the facts of the present case, in order to determine whether the respondent's mark is deceptively similar to the appellants' registered trademarks.

(A) SIMILARITY AND DISTINCTIVENESS: NAME, COLOUR SCHEME, AND TRADE DRESS

31. Trademark protection - whether based on name, colour combination, trade dress, or structural features - centres on a mark's ability to distinguish the commercial origin of goods or services in the minds of consumers. The likelihood of confusion remains the cornerstone of both infringement and passing off actions.

31.1. A registered trademark is infringed when a person, in the course of trade, uses a mark that is identical or deceptively similar to a registered trademark in relation to similar goods or services. Section 2(1)(h) of the Trade Marks Act, 1999 defines 'deceptively similar' to mean 'a mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion'.

31.2. Whether a trade mark is likely to deceive or cause confusion is a question of fact. Courts have consistently held that the 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.

31.3. As held in **Parker - Knoll Ltd v. Knoll International Ltd. - 1962 RPC 265**, proof 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.

31.4. The strength of a trademark lies in its inherent distinctiveness or the distinctiveness acquired through use. Invented or coined marks - such as Kodak or Solio - are inherently distinctive and command the highest degree of protection. These marks immediately signify the commercial origin of the goods or services. In contrast, descriptive marks - such as Air India, Mother Dairy, HMT, Windows, Doordarshan, LIC, and SBI - are not inherently distinctive and must acquire secondary meaning in the minds of the

public to qualify for protection. That is, the public must come to associate the mark with a particular source. Similarly, geographical terms like Simla or Liverpool, or generic trade terms, are generally not registrable unless they have acquired distinctiveness through long and exclusive use. The more distinctive a mark - whether inherently or through acquired reputation - the stronger its position in infringement or passing off actions.

31.5. 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. For instance, in **Tungabhadra Industries Ltd v. Registrar of Trade Marks – AIR 1959 SC 989**, the registration of "Diamond T" in a diamond-shaped logo was granted, but the word "Diamond" was required to be disclaimed due to its non-distinctiveness.

31.6. Short marks, especially those consisting of two-letter or minimal-character combinations, are treated cautiously. These are often considered non-distinctive, because they tend to resemble abbreviations, product codes, or alphanumeric references - especially in industries such as textiles, chemicals and machinery.

Unless secondary meaning is clearly demonstrated, such marks may be refused registration. However, courts have recognized exceptions for arbitrary or invented short marks that are not commonly used in the relevant trade -particularly in sectors like food and beverages, where even brief combinations can act as unique identifiers of origin.

31.7. Colour combinations are treated similarly to single colours combined with other distinctive elements. A specific combination of colours may be prima facie registrable depending on its manner of presentation. For example, colours used within a defined geometric shape may qualify for registration. 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. Ultimately, trademark 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.

31.8. Trade dress, encompassing the overall visual appearance of a product -including packaging, layout, colour schemes, and graphics - also enjoys protection. Indian courts

have recognized that a deceptively similar trade dress, even in the absence of a word mark, may mislead consumers and constitute passing off, particularly where visual cues trigger brand association and market confusion.

31.9. *** *** *** ***

(B) RULE OF ANTI-DISSECTION

32. 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. In **Kaviraj Pandit Durga Dutt Sharma v. Navratna Pharmaceuticals Laboratories** (supra), this Court underscored that the correct 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.

32.1. 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.

32.2. This approach finds further support in the observations of scholars such as McCarthy in Trademarks and Unfair Competition, who note that consumers seldom engage in detailed, analytical comparisons of competing marks. Purchasing decisions are instead based on imperfect recollection and the general impression created by a mark's sight, sound, and structure. The anti-dissection rule thus aligns the legal test for infringement with the actual behaviour and perception of consumers in the marketplace.

32.3. Consequently, in 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.

32.4. *** *** *** ***

(C) DOMINANT FEATURE TEST

33. In determining whether a mark is deceptively similar to another, courts often consider the dominant feature 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.

33.1. The principles of the anti-dissection rule and the dominant feature test, though seemingly in tension, 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.

33.2. 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.

***** **** ***** ****

(D) NO EXCLUSIVE RIGHT OVER COMMON OR DESCRIPTIVE TERMS

34. 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.

34.1. In **Godfrey Philips India Ltd v. Girnar Food & Beverages Pvt. Ltd. - (2004) 5 SCC 257**, this Court unequivocally held that descriptive words denoting the character or quality of goods are not capable of exclusive appropriation, except where they have acquired distinctiveness through prolonged, continuous, and exclusive use.

34.2. *** *** *** ***

34.4. In **Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.** (*supra*), this Court reaffirmed that deceptive similarity must be assessed holistically, taking into account factors such as the nature of the marks, the class of purchasers, mode of purchase, and the overall circumstances surrounding the trade.

34.5. *** *** *** ***

34.6. *** *** *** ***

(E) AVERAGE CONSUMER TEST AND IMPERFECT RECOLLECTION

35. 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. As held by the European Court of Justice in **Lloyd Schuhfabrik Meyer v. Klijsen Handel BV – Case C-342/97; [2000] F.S.R. 77, E.C.J.**, the average consumer

forms an overall impression of a mark rather than dissecting it into individual components.

35.1. A key feature of this test is the recognition that consumers rarely recall trademarks with perfect accuracy. For example, this Court in **Amritdhara Pharmacy v. Satyadeo Gupta** (supra) emphasized that the comparison must be made from the perspective of a person of average intelligence and imperfect recollection. Thus, minor phonetic or visual similarities may cause confusion if the marks share prominent or memorable features. The test also considers that the degree of consumer attentiveness may vary depending on the nature of the goods: greater care may be exercised when purchasing luxury items than in the case of everyday consumer goods.

35.2. 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.

35.3. 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.

35.4. 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 [See: **James Crossley Eno v. William George Dunn - *H.L. (E) 1890, June 19. Vol. XV, App. Cas. page 252*** and **Aristoc Ltd v. Rysta Ltd. - *1945 AC 68 (House of Lords)***. Instead, they have favoured realistic assessments that account for hazy memory, indistinct pronunciation, and fleeting visual impressions. Notably, invented or fanciful words are generally more difficult to recall than common or descriptive ones, and distinctive features are more likely to be retained in the consumer's memory.

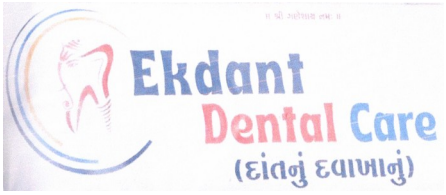
> 35.5. The foundational test for assessing deceptive similarity remains the Pianotist Test, as laid down in **Pianotist Co. Ltd's Application - *(1906) 23 RPC 774 at p. 777,*** by Justice Parker. Indian courts continue to apply this holistic standard, which requires consideration of the visual and phonetic 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."
>
> 35.6. This multifactorial framework complements the modern average consumer test, ensuring that the analysis of deceptive similarity remains practical and context-sensitive. It focuses on the overall commercial impression left by the marks, rather than conducting a mechanical or analytical breakdown. Indian courts have consistently adopted this approach in determining the likelihood of confusion in both infringement and passing off actions."

Thus, the Hon'ble Supreme Court has very succinctly discussed various legal principles governing trademark infringement and passing off, namely, (a) Similarity and Distinctiveness : Name, Colour Scheme, and Trade Dress; (b) Rule of Anti-dissection; (c) Dominant Feature Test; (d) No Exclusive Right over common or descriptive terms; (e) Average Consumer Test and Imperfect Recollection; and, (f) Legal Principles governing grant of injunction.

7.03) Now, keeping in mind the statutory provisions of the Trademark Act, 1999 and the legal principles governing the trademark infringement and passing off, if we switch over to the facts of the present case, then, it is very much evident that the plaintiff has filed the suit against the defendant for infringement of its registered trademark "Ekdant Multispeciality Dental Care Clinic" and the main bone of contention of the plaintiff is that the dominant mark "Ekdant" which is described in his registered trademark is infringed by the defendant. In support of the claim of the plaintiff, he has produced various documentary evidence vide the List at Exh.3 (Mark 3/1 to 3/44). It is transpired from the certificate of registration of trademark of the plaintiff produced at Marks 3/4, 3/5 and 3/6 that the Registrar has imposed the condition that registration of the trademark shall give no right to the exclusive use of the descriptive matters and the trademark is in the category of Class-44 - Dental Clinic for the State of Gujarat. The plaintiff has produced the CA Certified Sales Turn over at Mark 3/7, ITRs of the plaintiff at Marks 3/8 to 10, professional fee invoices at Marks 3/11 to 30, Cease and Desist Notice given by the plaintiff to the defendant at Mark 3/31, Reply given by the defendant to the cease and desist notice at Mark 3/32, rejoinder notice to the defendant at Mark 3/33, Photocopies of Hello Doctor's Magazine at Marks 3/34 to 3/40, Photocopy of invitation of the clinic of the defendant at Mark 3/41, Photocopy of the rival mark of the defendant at his clinic at Mark 3/42, and photocopies of screenshots of the defendant's firm on Google Search Engine at Marks 3/43 and 3/44.

7.04) As against that, the defence of the defendant is that the plaintiff has no exclusive right over the word "Ekdant" as it is a composite mark and the plaintiff does not possess any standalone registration of the word "Ekdant" per se; that the plaintiff's registration denies exclusivity; that the word "Ekdant" is *publici juris* / common to trade and is religious expression associated with Lord Ganesha; that there is no deceptive similarity between the rival marks; that the plaintiff is not prior or honest adopter of the mark "Ekdant"; that the plaintiff's own conduct destroys its case as he had in reply to the examination report specifically contended before the Trademark Registry that there is no deceptive similarity, no confusion is likely and the marks are visually and phonetically distinguishable and distinctiveness lies in the artistic label/device; and that there are multiple third party users which negatives exclusivity. On such grounds, the defendant has vehemently contended that there is no infringement of the trade mark of the plaintiff. Now, if we peruse the documents produced by the defendant along with the written statement at List Exh.9, then, it is revealed that the plaintiff's trademark application status report is produced at Mark 9/1, plaintiff's trademark application examination report at Mark 9/2, plaintiff's trademark application examination reply at Mark 9/3, plaintiff's trademark application examination order at Mark 9/4, Plaintiff's trademark journal copy at Mark 9/5, Public Search report of similar mark at Mark 9/6, Affidavit of the plaintiff at the time of filing trademark application at Mark 9/7.

7.05) In the present case, the mark of the plaintiff is “Ekdant Multispeciality Dental Care Clinic" and mark used by the defendant is “Ekdant Dental Care”. At this stage, a comparative visual analysis of the competing trademarks is warranted to determine whether the defendant’s mark bears any deceptive similarity to the plaintiff’s registered trademark so as to mislead or confuse an average consumer, by juxtaposing the facts with the settled legal position. The competing marks are given hereunder:

Plaintiff’s Mark	Defendant’s Mark
	

Upon a bare perusal of the aforesaid marks and keeping in mind the legal principles governing trademark infringement and passing off to the facts of the present case, now if we assess or examine the facts of the present case in order to determine as to whether the defendant’s mark is deceptively similar to the plaintiff’s registered trademark and that the plaintiff has *prima facie* case in his favour or not. In this context, if we apply the principle of "Similarity and Distinctiveness: Name, Colour, Scheme and Trade Dress", then, it is clear from the marks shown in the aforesaid table that the defendant’s mark is not similar to the plaintiff’s registered trademark when viewed in totality. The plaintiff’s mark – "Ekdant" is in light bluish colour,

while the defendant's mark uses the term "Ekdanta Dental Care" in three different colours i.e. Ekdanta is written in dark blue colour, Dental in red colour and Clinic in light blue colour and overall presentation is also distinct. Moreover, the font size and style in the plaintiff's mark "Ekdant" is also quite different in the defendant's mark "Ekdant". The placement of device mark of "Lord Ganesh" before the plaintiffs' mark "Ekdant" is also different. The defendant's mark does not contain the device mark of "Lord Ganesh" and it contains the mark of "Tooth". Thus, having viewed both the rival marks holistically, the competing marks do not create such an overall resemblance as is likely to cause confusion or deception in the mind of an average consumer exercising imperfect recollection.

7.06) Likewise, if we apply the rule of anti-dissection in the present case, the plaintiff's attempt to isolate the word "Ekdant" as the dominant mark and its basis of comparison would be legally untenable. Trademark similarity has to be assessed by considering the mark as a whole and not by extracting a single component for comparison. When viewed in its entirety, the plaintiff's mark – Ekdant is structurally and visually distinct from the defendant's mark "Ekdant". As discussed hereinabove, even colour combination in both the marks is also different and fonts are also of different size. Therefore, mere presence of the common word "Ekdant" which is a well recognised and widely understood appellation of Lord Ganesh and deeply rooted in the religious and cultural as well as linguistic fabric of Indian society, it does not render the

competing mark deceptively similar in the absence of an overall resemblance. Over and above, ordinarily, the expression of Ekdant is a part of common heritage of the public and extensively used across diverse trades, businesses, and institutions, often without any association with a single source or proprietor. Therefore, from the standpoint of anti-dissection rule also, no *prima facie* case of infringement or passing off is made out by the plaintiff.

7.07) Furthermore, applying the principle of dominant feature test to the present case, it is the contention of the plaintiff that their registered trademark “Ekdant” infringes their mark, however, upon a holistic comparison, the overall commercial impression of “Ekdant” is substantially different from the plaintiff’s mark. The trade dress, label design, colour scheme, typography and brand presentation are all distinctive and unrelated. Therefore, the defendant’s mark does not imitate the dominant features of the plaintiff’s mark. As such, there exists no real likelihood of confusion or false association in the mind of an average consumer exercising ordinary caution and imperfect collection. Though the plaintiff has claimed that the dominant mark "Ekdant" is deceptively similar in the defendant's mark, but, it is pertinent to note that the registration of the trade mark of the plaintiff if is seen then it is a composite registration of the mark "Ekdant Multispeciality Dental Care Clinic" and the Trademark Registry has granted registration subject to condition that registration of that trademark will not give right to the exclusive use of the descriptive matters. As per the provision in

Section 15 of the Act a proprietor of a trade mark needs to apply for exclusive use of any part separately and its effect has been provided in Section 17 of the Act, which provides that when a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken as a whole, however, when a trade mark contains any part which is not the subject of a separate application by the proprietor for registration as a trade mark or which is not separately registered by the proprietor as a trademark or it contains any matter which is common to the trade or is otherwise of a non-distinctive character, the registration shall not confer any exclusive right on the matter forming only a part of the whole of the trade mark so registered. Thus, in the instant case, *prima facie*, this Court finds that the word mark "Ekdant" is not separately registered by the plaintiff and what is registered is the composite mark i.e. "Ekdant Multispeciality Dental Care Clinic" and therefore, the plaintiff cannot be said to have exclusive right over the dominant mark "Ekdant". That apart, it is also revealed from the documents produced by the defendant at Mark 9/1 to 9/4 that prior to registration of the plaintiff's mark, there were other marks in the name of "Ekdant" already in use. No doubt, the words of "Ekdant" appearing in those marks are not similar to the one which is used by the plaintiff, but, then, it cannot be said that the plaintiff has exclusive right over the mark "Ekdant" when his registered mark is a composite mark containing description of "Ekdant Multispeciality Dental Care Clinic". Therefore, from that standpoint also, this Court does not find *prima facie* case in favour of the plaintiff.

7.08) Furthermore, it is 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. Now, if we take into consideration the controversy in the present case on the standpoint of no exclusive right over common or descriptive terms, then, the plaintiff has not produced on record any cogent evidence such as consumer survey, brand recognition studies, or consistent third party references so as to demonstrate that the term "Ekdant" has acquired secondary meaning exclusively pointing to his product. On the contrary, on perusal of the photocopies of the magazines at Marks 3/34 to 3/40 it is transpired that the plaintiff himself is not using the actual mark of "Ekdant Multispeciality Dental Care Clinic" in its original form and he uses it in different manners. Therefore, a bare pleading that he is using the mark since the year 2015, coupled with the turn over figures, is insufficient to displace the term's inherent descriptive or laudatory character. In that view of the matter, on this test also, the plaintiff has failed to demonstrate that he has a *prima facie* case in his favour.

7.09) Moreover, on the aspect of average consumer test and imperfect recollection, it is evident from the rival marks that

they are not deceptively similar. The plaintiff's mark "Ekdant Multispeciality Dental Care Clinic" convey distinct commercial impressions, when compared with the defendant's mark "Ekdant Dental Care". The overall visual appearance, phonetic structure, and trade dress - though sharing some generic elements such as use of word "Ekdant" are sufficiently different. These dissimilarities between the rival marks outweigh any incidental similarities, negating the likelihood of confusion in the mind of a consumer of average intelligence and imperfect recollection. Furthermore, it is to be noted that the consumers which are likely to be connected with the services of the plaintiff and defendants would be patients and in case of dental diseases, it is but natural that a patient will not directly go to a particular dental care clinic by looking at the trademark. On the contrary, the patient will, in his wisdom, try to collect different details as to the doctor providing services, his professional skills and results of treatment, including post treatment responses. In that view of the matter, on the aspect of average consumer test also, this Court *prima facie* finds that the plaintiff has failed to make out a case of infringement by the defendant and the arguments advanced by the learned Advocate for the defendant needs to be accepted in that context.

7.08) As deliberated hereinabove, the case put forth by the plaintiff of infringement of his trade mark "Ekdant" is unworthy of credit and the arguments of the learned Legal Advocate for the plaintiff, Mr. Butaney, referred to earlier cannot be accepted and they are simply rejected as this Court does not

find *prima facie* case in favour of the plaintiff. Moreover, the judgements relied upon by the learned Advocate for the plaintiff, Mr. Butaney, also does not extend any help to the plaintiff as they are delivered in the peculiar facts of those cases, and the judgement of the Hon'ble Supreme Court in the case of ***Pernod Ricard India Pvt. Ltd.*** (*supra*), which specifically lays down the principles governing the law pertaining to infringement of trademark, is very much applicable in the facts of the present case and the plaintiff has *prima facie* failed in all the tests described in the said judgement of the Hon'ble Supreme Court.

8.00) As an upshot of the foregoing discussion, this Court is of the considered view that the plaintiff has failed to make a *prima facie* in his favour. Moreover, balance of convenience is also not in his favour and if the interim relief as prayed for is granted, then, it is the defendant who is likely to suffer loss because of injunction as he has recently made investments in opening the clinic. Therefore, Issue Nos. 1, 2 and 3 are answered in the negative.

9.00) **ISSUE NO.4:**

In view of the foregoing discussion, the following order is passed:

:: ORDER ::

1) The present injunction application of the plaintiff is dismissed.

2) Costs to follow in the main cause.

Signed & Pronounced in the open Court today i.e. on this 8th day of June, 2026.

Date : 08/06/2026. (Kamlesh Nathabhai Prajapati)
Place: Surat. 15th Additional Sessions Judge, Surat
(Code: GJ00886)

Dhruvil Kumpavat