

## TRADE MARK

### DECEPTIVE SIMILARITY

Are you a brand owner who is worried that people in the market may copy your brand name or are you worried that you may be asked to change your trademark or brand name because it is similar to a pre existing brand? Fret not!

We are deconstructing the stand taken by courts across the country over the past month through the following infringement suits filed by established brands.

#### Fevi Kwik vs. Fixo Kwik

Fevi Kwik is a name well known in every household in India to the extent that it has become synonymous to super glue or instant adhesive. Pidilite, a globally renowned brand is the register proprietor of the mark Fevi Kwik in India. Pidilite filed a trademark infringement suit against the mark "Fixo Kwik" in the Bombay High Court. The Honourable Bombay High Court on examination of the names of the two products observed that the mark used by the defendants was prima facie similar to the registered trademark of Pidilite - Fevi Kwik. The Honourable Bombay High Court granted ad- interim relief to Pidilite Industries Ltd. against Fixo Industries which manufactures "Fixo Kwik".



#### Phone PE vs. Mobile Pe

In a trademark infringement suit filed by Indian digital payments and financial technology company PhonePe, the Madras High Court has temporarily restricted the digital payment platform providing UPI and BHIM services "Mobile PE". This interim order was passed after a prima facie satisfaction that there was a case of deception by MobilePe as both the entities were similar in business.



The principle used by the Court was the Ordinary Prudence of an average man with imperfect recollection who could get confused between the two. The Court was of the opinion that common users might mistake one for the other and therefore were convinced that there was deception on the part of MobilePe.

#### Naturals vs. Nic Natural Ice Cream

The Honourable Delhi High Court has recently restrained NIC Natural Icecreams from using NATURALS trademark, by granting an ex-parte ad-interim injunction. This injunction was granted by the Honourable Delhi High Court on the basis that a prima facie case was made out and there existed deceptive similarity between both the trademarks or trade names. The Court went into the popularity of NATURALS icecreams and how the word 'Naturals' was the prominent feature of the plaintiff's mark. The colour combination and packaging used by both the entities were also taken into consideration by the court in granting this interim injunction.



Therefore, as a brand owner one needs to keep in mind that constant market vigilance and pro-active assessment of trademark filings saves one's brand from brand dilution. On the other hand, if you are a new market entrant, looking to coin your brand name, keep in mind that it should not be similar to a pre-existing name and that it should not be generic so that it can be adopted by other market players.