

IP Laws Declared by the Supreme Court

Trademark Law Declared by the Supreme Court of India in Twenty-First Century (2010–2023)— II

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The Parliament of India amends and makes and unmakes the law. The Supreme Court of India (*hereinafter*, the Supreme Court), does not merely decide a *lis in personam* but also declares the law on a question that it decides to answer. The law so declared by the Supreme Court becomes binding *in rem* by virtue of Article 141 of the Constitution of India (*hereinafter*, the Constitution). The Supreme Court, by virtue of Article 141 of the Constitution, declares the law and makes and unmakes the law while deciding cases through the process of judicial review and interpretation-construction. In the second and third decades of twenty-first century, the Supreme Court has, on an average, decided 1.86 (point eight six) cases in a year, or one trademark case in 196.07 (point zero seven) days, or one case in .53 (point five three) year. A review of the reported decisions on the Trade Marks Act, 1999 (*hereinafter*, the Trade Marks Act) reveals that the Supreme Court has: (i) delivered a total of 27 decisions including a few decisions in which the Trade Marks Act finds only a reference; (ii) declared trademark law and iron out the creases of law by interpreting the text of the statutes; (iii) not declared anything on the constitutionality of the trademark statutes as no such question of constitutionality was brought before it; (iv) delivered all the decisions unanimously as no dissenting or concurring judgment is reported; (v) decided maximum number of cases by Division Bench (21 cases) constituting 77.77 (point seven seven) percent, followed by Full Bench (5 cases) constituting 18.51 (point five one) percent, and 1 by Single Bench constituting 3.7 (point seven) percent; and (vi) decided only one trademark case by a Single Bench which is reported from the third decade of this century. A total of 39 judges were on the bench deciding the 27 trademark cases. It has been observed that no sitting Chief Justice of India was on the bench in any of the trademark cases. Paper proceeds with the same argument and method as developed and adopted in the papers covering patent law, copyright law, design law and trademark law in twentieth and twenty-first centuries published under the theme *IP Laws Declared by the Supreme Court*. This Paper seeks to cull out the principles of trademark law declared by the Supreme Court in the second and third decades of the twenty-first century.

Keywords: Trademark, Supreme Court of India, Law Declared, Article 141, The Constitution of India, The Trade Marks Act 1940, The Trade and Merchandise Marks Act, 1958, The Trade Marks Act, 1999, Bench, Decisions, Dissenting, Concurring, Constructed Meaning, Principles, Interpretation-Construction, Unwary Purchaser, Trademark Infringement, Passing Off Action, Remedy, Twenty-First Century

The Supreme Court of India (*hereinafter*, the Supreme Court), by virtue of Article 141 of the Constitution of India, declares the law and makes and unmakes the law while deciding the cases through the process of judicial review and interpretation-construction.¹ This Paper is in continuation to the papers *Patent Law Declared by the Supreme Court of India*² (First Paper), *Copyright Law Declared by the Supreme Court of India*,³ *Design Law Declared by the Supreme Court of India*,⁴ *Trademark Law Declared by the Supreme Court of India in Twentieth-Century*,⁵ and *Trademark Law Declared by the Supreme Court of India in Twenty-First Century (2000–2009)—I*⁶ published in the *Journal of*

Intellectual Property Rights (JIPR) under the theme *IP Laws Declared by the Supreme Court*. Since maximum number of reported intellectual property (*hereinafter*, IP) decisions are on the Trademark Law, these reported trademark decisions have been covered in three parts. The first part⁵ covered the trademark decisions from 20th century, from the date of coming into being of the Supreme Court⁷ till the year 1999. The second part⁶ culled out the principles of trademark law declared by the Supreme Court in the first decade of the twenty-first century (2000–2009). This Paper seeks to cull out the principles of trademark law declared² by the Supreme Court in its reported decisions⁸ in the second and third decades of the twenty-first century (2010–June 2023). In these two decades, a total of 27 reported decisions were

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delivered by the Supreme Court. Of these 27 decisions, 18 are from the second decade, and the remaining 9 decisions are from the third decade. These 27 decisions include 5 Full Bench and 21 Division Bench decisions and 1 by a Single Bench. No Constitution Bench decision is reported. The first reported decision from this decade is by a Full Bench. A total of 38 judges were on the bench in these 27 cases, and of them only 16 judges authored the judgment. Unlike the trademark cases analyzed in the previous two papers, in this decade, a Single Bench decision is reported in which Justice Aniruddha Bose authored the judgment. Justice Dr A K Sikri authored the maximum number of judgments. He authored all the 5 judgments in the five cases (all Division Bench decisions) in which he was on the bench. Justice Ranjan Gogoi was on the bench in 2 cases (all Division Bench) and authored 2 judgments. Justice B R Gavai was on the bench in 3 cases including 1 Full Bench, and authored 2 judgments (one in a Division Bench and another one in a Full Bench). Justice Aniruddha Bose was on the bench in 1 case (Single Bench) and authored the judgment. Justices G S Singhvi and Altamas Kabir were on the bench in 1 case each and authored the judgment (Full Bench). Justices Arun Mishra, P Sathasivam, Dr Dalveer Bhandari, Dipankar Datta and Ajay Rastogi were on the bench in 1 case and authored the judgment (all Division Bench). Justices Anil R Dave, Aftab Alam, R M Lodha, Vikramajit Sen, Rohinton Fali Nariman were on the bench in 2 cases each and authored only 1 judgment (all Division Bench). Justice L Nageswara Rao was on the bench in 4 cases (1 Full Bench and 3 Division Bench) and authored only 1 judgment on behalf of the Full Bench. Justice S Ravindra Bhat was on the bench in 2 cases (1 Division Bench and 1 Full Bench) and authored 1 judgment (Full Bench). Justices Tarun Chatterjee, B S Chauhan, SS Nijjar, Gyan Sudha Mishra, Hemant Gupta and B V Nagarathna were on bench in 1 case each and did not author any judgment (all Full Bench). Justices A M Khanwilkar, Abhay Shreenivas Oka and C T Ravi Kumar were on the bench in 1 case in which the Full Bench delivered a unanimous Order. Justice K S P Radhakrishnan was on the bench in 3 cases and did not author any judgment. Justice Navin Sinha was on the bench in two case (Division Bench) and did not author any judgment. Justices Jagdish Singh Khehar, H L Dattu, Shiva Kirti Singh, R Banumathi, Ashok Bhushan, Indu Malhotra, Dinesh Maheshwari, Vikram Nath and Bela M Trivedi were on the bench in 1 case each (Division Bench) but did not author any judgment. In total, 14 judges decided the 5 Full Bench

cases and 26 judges decided the 21 Division Bench cases — Justice L Nageswara Rao being the only judge who was in two Full Bench decisions. No sitting Chief Justice of India was on the bench in any of the reported cases. (Table 1)

The first reported decision of the Supreme Court on trademark law is *Skyline Education Institute (India) Private Limited v S L Vaswani*,⁹ and the latest decision is *Srei Multiple Asset Investment Trust Vision India Fund v Deccan Chronicle Marketeers*.

Trademark Law Declared in the Second Decade of Twenty-First Century

A total of 18 reported decisions on the trademark law were delivered in this decade. These 18 decisions include 2 Full Bench decisions and the remaining 16 decisions are by Division Bench. A total of 15 judges were on the bench in these 18 decisions. The first reported decision from this decade is *Skyline Education Institute (India) Private Limited v S L Vaswani*⁹ a Full Bench decision, and the last is *Wockhardt Limited v Torrent Pharmaceuticals Limited*.¹¹

*Skyline Education Institute (India) Private Limited v S L Vaswani*⁹ is a Full Bench decision of the Supreme Court. The unanimous judgment on behalf of the Court was delivered by Justice G S Singhvi. The Court reiterating to its decision in *Cadila Healthcare Ltd v Cadila Pharmaceuticals*¹² declared that '[O]nce the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity.'¹³

DAV Boys Sr Sec School v DAV College Managing Committee,¹⁴ is a Division Bench decision of the Supreme Court. Justice P Sathasivam delivered the unanimous judgment on behalf of the Court. The Court declared that 'Sections 134 of the Trade Marks Act, 1999¹⁵...confers a jurisdiction with respect to a registered trade mark...[T]he issue relating to jurisdiction particularly whether Court...has jurisdiction or not is to be decided by the Trial Court.'¹⁶

Table 1 — Trademark decisions delivered by the Supreme Court of India in twenty-first century (2010–June 2023)

S. No.	Name of Judgment	Date	Bench	Judges*	Concurring Judgment, if reported	Dissenting Judgment, if reported	Whether the Court Declared the Principles of Trademark Law?	Whether Interpreted- Constructed?	Whether Unanimous Decision?
1	<i>Skyline Education Institute (India) Private Limited v S L Vaswani</i> , (2010) 2 SCC 142	5.1.2010	Full	Tarun Chatterjee, G S Singhvi & B S Chauhan, <i>JJ.</i>	No	No	Yes	Yes Interpreted/ Reiterated its earlier position	Yes
2	<i>DAV Boys Sr Sec School v DAV College Managing Committee</i> , (2010) 8 SCC 401	23.7.2010	Division	P Sathasivam & Anil R Dave, <i>JJ.</i>	No	No	Yes	Yes Interpreted	Yes
3	<i>Shalimar Chemical Works Limited v Surendra Oil and Dal Mills (Refineries)</i> , (2010) 8 SCC 423	27.8.2010	Division	Aftab Alam & R M Lodha, <i>JJ.</i>	No	No	No	No	Yes
4	<i>Infosys Technologies Limited v Jupiter Infosys Limited</i> , (2011) 1 SCC 125	9.11.2010	Division	Aftab Alam & R M Lodha , <i>JJ.</i>	No	No	Yes	Yes Interpreted-constructed/ Reiterated its earlier position	Yes
5	<i>T V Venugopal v Ushodaya Enterprises Limited</i> , (2011) 4 SCC 85	3.3.2011	Division	Dr Dalveer Bhandari & K S P Radhakrishnan, <i>JJ.</i>	No	No	Yes	Yes	Yes
6	<i>Suresh Dhanukav Sunita Mohapatra</i> , (2012) 1 SCC 578	2.12.2011	Full	Altamas Kabir , S SNijjar & Gyan Sudha Mishra, <i>JJ.</i>	No	No	No	Yes Reiterated its position on Section 27 of the Indian Contract Act, 1872 [Act 9 of 1872]	Yes
7	<i>Satnam Overseas v Sant Ram and Company</i> , (2014) 14 SCC 782	22.11. 2013	Division	K S P Radhakrishnan & Dr A K Sikri , <i>JJ.</i>	No	No	Yes	Yes Interpreted/ Reiterated its earlier decisions	Yes
8	<i>Lakha Ram Sharma v Balar Marketing Private Limited</i> , (2014) 14 SCC 331	27.11.2013	Division	K S P Radhakrishnan & Dr A K Sikri , <i>JJ.</i>	No	No	No	No	Yes
9	<i>Precious Jewels v Varun Gems</i> , (2015) 1 SCC 160	4.8.2014	Division	Anil R Dave & Vikramajit Sen, <i>JJ.</i>	No	No	No	No	Yes
10	<i>Vir Rubber Products Private Limited v Commissioner of Central Excise, Mumbai III</i> , (2015) 13 SCC 466	27.3.2015	Division	Dr A K Sikri & Rohinton Fali Nariman, <i>JJ.</i>	No	No	No	No	Yes
11	<i>Indian Performing Rights Society v Sanjay Dalia</i> , (2015) 10 SCC 161	1.7.2015	Division	Jagdish Singh Khehar & Arun Mishra , <i>JJ.</i>	No	No	Yes	Yes Interpreted	Yes
12	<i>S Syed Mohideen v P Sulochna Bai</i> , (2016) 2 SCC 683	17.3.2015	Division	H L Dattu & Dr A K Sikri , <i>JJ.</i>	No	No	Yes	Yes Interpreted	Yes
13	<i>Neon Laboratories Limited v Medical Technologies Limited</i> , (2016) 2 SCC 672	5.10.2015	Division	Vikramajit Sen & Shiva Kirti Singh, <i>JJ.</i>	No	No	Yes	Yes Interpreted	Yes

(Contd.)

Table 1 — Trademark decisions delivered by the Supreme Court of India in twenty-first century (2010–June 2023) (Contd.)

S. No.	Name of Judgment	Date	Bench	Judges*	Concurring Judgment, if reported	Dissenting Judgment, if reported	Whether the Court Declared the Principles of Trademark Law?	Whether Interpreted- Constructed?	Whether Unanimous Decision?
14	<i>Patel Field Marshal Agencies v P M Diesels Limited</i> , (2018) 2 SCC 112	29.11.2017	Division	Ranjan Gogoi & Navin Sinha, <i>JJ.</i>	No	No	Yes	Yes Interpreted	Yes
15	<i>Royal Orchid Hotels Limited v Kamat Hotels (India) Limited</i> , (2018) 1 SCC 728	14.12.2017	Division	Ranjan Gogoi & R Banumathi, <i>JJ.</i>	No	No	No	No	Yes
16	<i>Toyota Jidosha Kabushiki Kaisha v Prius Auto Industries Limited</i> , (2018) 2 SCC 1	14.12.2017	Division	Ranjan Gogoi & Navin Sinha, <i>JJ.</i>	No	No	Yes	Yes Interpreted	Yes
17	<i>Nandhini Deluxe v Karnataka Cooperative Milk Producers Federation Limited</i> , (2018) 9 SCC 183	26.7.2018	Division	Dr A K Sikri & Ashok Bhushan, <i>JJ.</i>	No	No	Yes	Yes Interpreted	Yes
18	<i>Wockhardt Limited v Torrent Pharmaceuticals Limited</i> , (2018) 18 SCC 346	12.9.2018	Division	Rohinton Fali Nariman & Indu Malhotra, <i>JJ.</i>	No	No	Yes	Reiterated its earlier decisions	Yes
19	<i>International Association for Protection of Intellectual Property (India Group) v Union of India</i> , (2021) 4 SCC 519	12.2.2021	Full	L Nageswara Rao, Hemant Gupta & S Ravindra Bhat , <i>JJ.</i>	No	No	No	No	Yes
20	<i>Rajkumar Sabu v Sabu Trade Private Limited</i> , 2021 SCC OnLine SC 378	7.5.2021	Single	Aniruddha Bose , <i>J.</i>	No	No	No	No	Yes
21	<i>Renaissance Hotel Holdings Inc v B Vijaya Sai</i> , (2022) 5 SCC 1	19.1.2022	Full	L Nageswara Rao, B R Gavai & B V Nagarathna, <i>JJ.</i>	No	No	Yes	Yes Interpreted	Yes
22	<i>Shiv Developers v Aksharay Developers</i> , 2022 SCC OnLine SC 114	31.1.2022	Division	Dinesh Maheshwari and Vikram Nath, <i>JJ.</i>	No	No	Yes	Reiterated its earlier decisions	Yes
23	<i>Ajanta LLP v Casio Keisanki Kabushiki Kaisha d/b/a Casio Computer Company Limited</i> , (2022) 5 SCC 449	4.2.2022	Division	L Nageswara Rao & B R Gavai, <i>JJ.</i>	No	No	No	No	Yes
24	<i>ShyamSel and Power Limited v Shyam Steel Industries Limited</i> , (2023) 1 SCC 634	13.3.2022	Division	L Nageswara Rao & B R Gavai , <i>JJ.</i>	No	No	Yes	Reiterated the settled principle of law	Yes
25	<i>Kangaro Industries (Regd) v Jaininder Jain</i> , Civil Appeal No. 5007 of 2008	6.4.2022	Full	A M Khanwilkar, Abhay Shreeniwas Oka & C T Ravikumar, <i>JJ.</i>	No	No	No	No	Yes
26	<i>Godrej Sara Lee Limited v Excise and Taxation Officer-cum-Assessing Authority</i> , 2023 SCC OnLine SC 95	1.2.2023	Division	S Ravindra Bhat & Dipankar Datta , <i>JJ.</i>	No	No	No	Reiterated its earlier decision	Yes
27	<i>Srei Multiple Asset Investment Trust Vision India Fund v Deccan Chronicle Marketeers</i> , (2023) 7 SCC 295	17.3.2023	Division	Ajay Rastogi & Bela M Trivedi, <i>JJ.</i>	No	No	No	No	Yes

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

*Shalimar Chemical Works Limited v Surendra Oil and Dal Mills (Refineries)*¹⁷ is a Division Bench decision of the Court. The unanimous judgment on behalf of the Court was penned down by Justice Aftab Alam. The Court decided the case on merit. No such principle of trademark has been declared in this case.

Infosys Technologies Limited v Jupiter Infosys Limited,¹⁸ is a Division Bench decision of the Court. Justice R M Lodha delivered the judgment on behalf of the Court. The Court on the meaning of the expression ‘person aggrieved’ under Section 46 of the Trade and Merchandise Marks Act, 1958¹⁹ (*hereinafter*, the 1958 Act) declared that:

‘To be an aggrieved person under Section 46 (of the 1958 Act), “*he must be one whose interest is affected in some possible way; it must not be a fanciful suggestion of grievance.*” A likelihood of some injury or damage to the applicant by such trade mark remaining on the register may meet the test of *locus standi*.’²⁰

The Court referring²¹ and relying²² on its earlier decisions, further declared that:

‘In terms of Section 46, not only that the applicant has to show that he is an aggrieved person as his interest is being affected but the Intellectual Property Appellate Board (IPAB) must also be satisfied, before it directs the removal of registered trade mark, that the applicant is an aggrieved person before it invokes the power in directing the removal of the registered trade mark. This is so because the pre-requisite for exercise of power under Section 46 (1) is that the applicant is a person aggrieved.’²³

‘[T]he grievance of the applicant when he invokes Section 46 (1) must not only be taken to have existed on the date of making application *but must continue to exist when such application is decided*. If during the pendency of such application, the applicant’s cause of complaint does not survive or his grievance does not subsist due to his own action or the applicant has waived his right or he has lost his interest for any other reason, there may not be any justification for rectification as the registered trade mark cannot be said to operate prejudicially to his interest.’²⁴

T V Venugopal v Ushodaya Enterprises Limited,²⁵ is a Division Bench decision of the Supreme Court. Justice Dr Dalveer Bhandari penned down the unanimous judgment on behalf of the Court. The principles of trademark law culled out from the decision are: (i) ‘*Honesty and fair play ought to be the*

basis of the policies in the world of trade and business’;²⁶ and (ii) ‘The law is consistent that *no one can be permitted to encroach upon the reputation and goodwill of other parties.*’²⁶

Suresh Dhanukav Sunita Mohapatra,²⁷ is a Full Bench decision of the Supreme Court. Justice Altamas Kabir delivered the judgment on behalf of the Court. The case was related to the right acquired under the deed of assignment of right, title and interest in the trademark. Three questions were for consideration before the Court, one of them was relating to invocation of Section 42 of the Specific Relief Act, 1963²⁸ to enforce the negative covenant contained in the assignment deed whether it was contrary to the provisions of Section 27 of the Indian Contract Act, 1872²⁹ (though Section 27 of the Contract Act was not attracted to the facts of the case).³⁰ The Court explained the provisions as:

‘[W]hat is declared to be void by virtue of Section 27 is any agreement to restrain any person from exercising his right to carry on a profession or trade or business and any restraint thereupon by an Agreement would be void.’³⁰

Satnam Overseas v Sant Ram and Company,³¹ is a Division Bench decision of the Supreme Court. Justice Dr A K Sikri delivered the judgment on behalf of the Court. Case deals with the interpretation of the provisions of sub-sections (1) and (2) of Section 46 of the Trade and Merchandise Marks Act, 1958.¹⁹ The Court referred to *Hardie Trading Ltd*³² and *Cycle Corporation of India Ltd v T I Raleigh Industries (P) Ltd*,³³ and declared:

‘Section 46 (1) (b)...*The onus to prove non-use rests upon the applicant who has filed the application for rectification.* [I]t is sufficient that the applicant who has filed the application for rectification to give prima facie evidence for non-use of the mark during the relevant period of five years from the date of one month before the date of the application for rectification. Once it is prima facie shown, then the onus shifts to the registered proprietor to prove the use of the trademark during the relevant period.’³⁴

Lakha Ram Sharma v Balar Marketing Private Limited,³⁵ is a Division Bench decision of the Supreme Court. Justice Dr A K Sikri delivered the unanimous judgment on behalf of the Court. No principle of trademark law was declared by the Court in this case. The Court on merit set aside the orders of the IPAB and the High Court.

*Precious Jewels v Varun Gems*³⁶ is a Division Bench decision of the Supreme Court. Justice Anil R Dave delivered the unanimous judgment on behalf of the Court. No principle of trademark law was declared by the Court in this case.

*Vir Rubber Products Private Limited v Commissioner of Central Excise, Mumbai III*³⁷ is a Division Bench decision of the Supreme Court. Justice Dr A K Sikri delivered the unanimous judgment on behalf of the Court. No principle of trademark law was declared by the Court in this case.

Indian Performing Rights Society v Sanjay Dalia,³⁸ is a Division Bench decision of the Supreme Court. Justice Arun Mishra delivered the unanimous judgment on behalf of the Court. The Court declared:

‘On a due and anxious consideration of the provisions contained in section 20 of the CPC,³⁹ Section 62 of the Copyright Act⁴⁰ and Section 134 of the Trade Marks Act, and the object with which the latter provisions have been enacted, it is clear that *if a cause of action has arisen wholly or in part, where the plaintiff is residing or having its principal office/carries on business or personally works for gain, the suit can be filed at such place/s*. Plaintiff(s) can also institute a suit at a place where he is residing, carrying on business or personally works for gain de hors the fact that the cause of action has not arisen at a place where he/they are residing or any one of them is residing, carries on business or personally works for gain. However, this right to institute suit at such a place has to be read subject to certain restrictions, such as in case plaintiff is residing or carrying on business at a particular place/having its head office and at such place cause of action has also arisen wholly or in part, plaintiff cannot ignore such a place under the guise that he is carrying on business at other far-flung places also. The very intendment of the insertion of provision in the Copyright Act and Trade Marks Act is the convenience of the plaintiff. The rule of convenience of the parties has been given a statutory expression in section 20 of the CPC as well. *The interpretation of provisions has to be such which prevents the mischief of causing inconvenience to parties.*’⁴¹

‘Where the Corporation is having ordinary residence/principal place of business and cause of action has also arisen at that place, it has to institute a suit at the said place and not at other places. The provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act never intended to operate in the field where the plaintiff is

having its principal place of business at a particular place and the cause of action has also arisen at that place so as to enable it to file a suit at a distant place where its subordinate office is situated though at such place no cause of action has arisen. Such interpretation would cause great harm and would be juxtaposed to the very legislative intendment of the provisions so enacted.’⁴²

‘[I]n a case where cause of action has arisen at a place where the plaintiff is residing or where there are more than one such persons, any of them actually or voluntarily resides or carries on business or personally works for gain would oust the jurisdiction of other place where the cause of action has not arisen though at such a place, by virtue of having subordinate office, the plaintiff instituting a suit or other proceedings might be carrying on business or personally works for gain.’⁴²

‘There is no doubt about it that the words used in Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, ‘notwithstanding anything contained in CPC or any other law for the time being in force’, emphasise that the requirement of Section 20 of the CPC would not have to be complied with by the plaintiff if he resides or carries on business in the local limits of the court where he has filed the suit but, in our view, at the same time, as the provision providing for an additional forum, cannot be interpreted in the manner that it has authorised the plaintiff to institute a suit at a different place other than the place where he is ordinarily residing or having principal office and incidentally where the cause of action wholly or in part has also arisen...’⁴³

‘The provisions of Section 62 (2) of the Copyright Act and Section 134 of the Trade Marks Act are *parimateria*. Section 134 (2) of the Trade Marks Act is applicable to clauses (a) and (b) of Section 134 (1) of the Trade Marks Act. Thus, a procedure to institute suit with respect to Section 134 (1) (c) in respect of “passing off” continues to be governed by section 20 of CPC.’⁴⁴

‘It is settled proposition of law that *the interpretation of the provisions has to be such which prevents mischief.*’⁴⁴

‘[T]he provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act have to be interpreted in the purposive manner. [A] suit can be filed by the plaintiff at a place where he is residing or carrying on business or personally works for gain. He need not travel to file a suit to a place where

defendant is residing or cause of action wholly or in part arises. However, if the plaintiff is residing or carrying on business etc. at a place where cause of action, wholly or in part, has also arisen, he has to file a suit at that place, as discussed above.⁴⁵

S Syed Mohideen v P Sulochna Bai,⁴⁶ is a Division Bench decision of the Supreme Court. Justice Dr A K Sikri delivered the unanimous decision on behalf of the Court. Following principles of trademark law may be culled out from the decision:

‘Collective reading of the provisions especially Section 27, 28, 29 and 34 of the Trade Marks Act, 1999 would show that the *rights conferred by registration are subject to the rights of the prior user of the trademark*.⁴⁷

‘From the reading of Section 27 (2) of the Act, it is clear that the *right of action of any person for passing off the goods/services of another person and remedies thereof are not affected by the provisions of the Act*. Thus, the rights in passing off are emanating from the common law and not from the provisions of the Act and they are independent from the rights conferred by the Act. This is evident from the reading of opening words of Section 27 (2) which are “Nothing in this Act shall be deemed to affect rights.....”⁴⁷

‘[R]egistration of the mark shall give exclusive rights to the use of the trademark subject to the other provisions of this Act. Thus, *the rights granted by the registration in the form of exclusivity are not absolute but are subject to the provisions of the Act*.⁴⁷

‘Section 28 (3) of the Act provides that the rights of two registered proprietors of identical or nearly resembling trademarks shall not be enforced against each other. However, they shall be same against the third parties. Section 28 (3) merely provides that there shall be no rights of one registered proprietor *vis-à-vis* another but only for the purpose of registration. The said provision 28 (3) nowhere comments about the rights of passing off which shall remain unaffected due to overriding effect of Section 27 (2) of the Act and thus the rights emanating from the common law shall remain undisturbed by the enactment of Section 28(3) which clearly states that the rights of one registered proprietor shall not be enforced against another person.⁴⁸

‘Section 34 of the Trade Marks Act, 1999 provides that nothing in this Act shall entitle the registered proprietor or registered user to interfere with the rights of prior user. Conjoint reading of Section 34, 27 and 28 would show that the rights of registration are subject to Section 34 which can be seen from the

opening words of Section 28 of the Act which states “Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor....” and also the opening words of Section 34 which states “Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere.....”. *[S]cheme of the Act is such where rights of prior user are recognized superior than that of the registration and even the registered proprietor cannot disturb/interfere with the rights of prior user*. The overall effect of collective reading of the provisions of the Act is that the action for passing off which is premised on the rights of prior user generating a goodwill shall be unaffected by any registration provided under the Act.⁴⁹

‘[P]assing off in common law is considered to be a right for protection of goodwill in the business against misrepresentation caused in the course of trade and for prevention of resultant damage on account of the said misrepresentation. *The three ingredients of passing off are goodwill, misrepresentation and damage*.⁴⁹

‘[I]t is also recognized principle in common law jurisdiction that passing off right is broader remedy than that of infringement. This is due to the reason that the passing off doctrine operates on the general principle that no person is entitled to represent his or her business as business of other person. The said action in deceit is maintainable for diverse reasons other than that of registered rights which are allocated rights under the Act.⁵⁰

‘It is also well settled principle of law in the field of the trade marks that the registration merely recognizes the rights which are already pre-existing in common law and does not create any rights.⁵¹

‘*[R]egistration is merely a recognition of the rights pre-existing in common law and in case of conflict between the two registered proprietors, the evaluation of the better rights in common law is essential as the common law rights would enable the court to determine whose rights between the two registered proprietors are better and superior in common law which have been recognized in the form of the registration by the Act*.⁵²

‘When the plaintiff has proved that the person who gets into the business at the first point of time acquired the right to use the trade mark, the priority in use of the trade mark by the plaintiff will have to be recognized in law.⁵³

Neon Laboratories Limited v Medical Technologies Limited,⁵⁴ is a Division Bench decision of the Supreme Court. The judgment of the Court was delivered by Justice Vikramajit Sen. The Court declared that:

‘Section 34 palpably holds that a proprietor of a trade mark does not have the right to prevent the use by another party of an identical or similar mark where that user commenced prior to the user or date of registration of the proprietor. *This “first user” rule is a seminal part of the Act.* While the case of the Plaintiff-Respondents is furthered by the fact that their user commenced prior to that of the Defendant-Appellant, the entirety of the section needs to be taken into consideration, in that it gives rights to a subsequent user when its user is prior to the user of the proprietor and prior to the date of registration of the proprietor, whichever is earlier.’⁵⁵

‘Section 47 of the Act is in the same vein and statutory strain inasmuch as it postulates the possibility of a registered mark being taken off the register on an application being made by any aggrieved person, inter alia, on the ground that for a continuous period of five years and three months from the date on which the trademark was registered, there was no bona fide use thereof...[T]he Act does not permit the hoarding of or appropriation without utilization of a trademark; nay the Defendant-Appellant has allowed or acquiesced in the user of the Plaintiff-Respondents for several years. The legislative intent behind this Section was to ordain that an applicant of a trademark does not have a permanent right by virtue of its application alone. Such a right is lost if it is not exercised within a reasonable time.’⁵⁵

Patel Field Marshal Agencies v P M Diesels Limited,⁵⁶ is a Division Bench decision of the Supreme Court. The unanimous decision of the Court was delivered by Justice Ranjan Gogoi.

‘Registration of a trade-mark vests in the registered owner an exclusive right to use the mark in relation to the goods in respect of which the mark has been registered. This is, however, subject to such conditions and limitations as may be incorporated in the registration itself. It also grants to the registered owner a right to seek and obtain relief in case of infringement of the mark. Section 46 in Chapter VI of the 1958 Act contemplates removal from the register of any registered trade mark, *inter alia*, on the ground that the same was registered without any bona fide

intention of use and, in fact, such mark has not been used up to one month prior to the date of the application for removal or that for a continuous period of five years there has been no bona fide use of the mark. Chapter VII of the 1958 Act deals with rectification and correction of the register of trade marks...’⁵⁷

‘In cases where in a suit for infringement of a registered trade mark the validity of the registration of the trade mark is questioned either by the plaintiff or by the defendant, Section 107 of the 1958 Act provides that an application for rectification shall be made to the High Court and not to the Registrar notwithstanding the provisions contained in Section 46 or Section 56 of the 1958 Act. This would seem to suggest that in such cases (where a suit for infringement is pending) the legislative scheme is somewhat different.’⁵⁸

‘[W]ell accepted principles of interpretation of statutes, which would hardly require a reiteration, the heading of Section 111 of the 1958 Act *i.e.*, “Stay of proceedings where the validity of registration of the trade mark is questioned, etc.”, cannot be understood to be determinative of the true purport, *intent and effect of the provisions contained therein so as to understand the said section to be contemplating only stay of proceedings of the suit where validity of the registration of the trade mark is questioned.* Naturally, the whole of the provisions of the section will have to be read and so read the same would clearly show lack of any legislative intent to limit/confine the operation of the section to what its title may convey.’⁵⁷

‘Rather, from the resume of the provisions of the 1958 Act made above it becomes clear that all questions with regard to the validity of a Trade Mark is required to be decided by the Registrar or the High Court under the 1958 Act or by the Registrar or the IPAB under the 1999 Act and not by the Civil Court. The Civil Court, infact, is not empowered by the Act to decide the said question. Furthermore, the Act mandates that the decisions rendered by the prescribed statutory authority [Registrar/High Court (now IPAB)] will bind the Civil Court. At the same time, the Act (both old and new) goes on to provide a different procedure to govern the exercise of the same jurisdiction in two different situations. In a case where the issue of invalidity is raised or arises independent of a suit, the prescribed statutory

authority will be the sole authority to deal with the matter. However, in a situation where a suit is pending (whether instituted before or after the filing of a rectification application) the exercise of jurisdiction by the prescribed statutory authority is contingent on a finding of the Civil Court as regards the prima facie tenability of the plea of invalidity.⁵⁹

‘Conversely, in a situation where the Civil Court does not find a triable issue on the plea of invalidity the remedy of an aggrieved party would not be to move under Section 46/56 of the 1958 Act but to challenge the order of the Civil Court in appeal. This would be necessary to avoid multiple proceedings on the same issue and resultant conflict of decisions.’⁵⁹

‘The 1958 Act clearly visualizes that though in both situations *i.e.*, where no suit for infringement is pending at the time of filing of the application for rectification or such a suit has come to be instituted subsequent to the application for rectification, it is the Registrar or the High Court which constitutes the Tribunal to determine the question of invalidity, the procedure contemplated by the Statute to govern the exercise of jurisdiction to rectify is, however, different in the two situations enumerated. Such difference has already been noted.’⁵⁹

‘All issues relating to and connected with the validity of registration has to be dealt with by the Tribunal and not by the civil court. In cases where the parties have not approached the civil court, Section 46 and 56 provide an independent statutory right to an aggrieved party to seek rectification of a trade mark. However, in the event the Civil Court is approached, *inter alia*, raising the issue of invalidity of the trade mark such plea will be decided not by the civil court but by the Tribunal under the 1958 Act. The Tribunal will however come into seisin of the matter only if the Civil Court is satisfied that an issue with regard to invalidity ought to be framed in the suit. Once an issue to the said effect is framed, the matter will have to go to the Tribunal and the decision of the Tribunal will thereafter bind the Civil Court. If despite the order of the civil court the parties do not approach the Tribunal for rectification, the plea with regard to rectification will no longer survive.’⁵⁹

‘The legislature while providing consequences for non-compliance with timelines for doing of any act must be understood to have intended such consequences to be mandatory in nature, thereby, also affecting the substantive rights of the parties. This is

how Section 111 (3) of the 1958 Act has to be understood.’⁶⁰

‘The mandate of the 1958 Act, particularly, Section 111 thereof, appears to be that if an aggrieved party does not approach the Tribunal for a decision on the issue of invalidity of registration as provided for under Section 111 (2) and (3), the right to raise the issue (of invalidity) would no longer survive between the parties to enable the concerned party to seek enforcement of the same by recourse to or by a separate action under the provisions of Section 46/56 of the 1958 Act.’⁶¹

‘Section 111 of the 1958 Act and the corresponding Section 124 of the 1999 Act nowhere contemplates grant of permission by the civil court to move the High Court or the IPAB, as may be, for rectification.’⁶²

‘[T]he jurisdiction of rectification conferred by Section 46 and 56 of the 1958 Act is the very same jurisdiction that is to be exercised under Sections 107 and 111 of the 1958 Act when the issue of invalidity is raised in the suit but by observance of two different procedural regimes.’⁶²

Royal Orchid Hotels Limited v Kamat Hotels (India) Limited,⁶³ is a Division Bench decision of the Supreme Court. The judgment on behalf of the Court was delivered by Justice Ranjan Gogoi. No principles of trademark law declared by the Court in this case.

Toyota Jidosha Kabushiki Kaisha v Prius Auto Industries Limited,⁶⁴ is a Division Bench decision of the Supreme Court. Justice Ranjan Gogoi delivered the judgment on behalf of the Court. Court referred to *S Syed Mohideenv P Sulochna Bai*⁴⁶ to reiterate that ‘the action for passing off which is premised on the rights of prior user generating a goodwill shall be unaffected by any registration provided under the Act’⁴⁹ and the trinity test.⁴⁹

‘To give effect to the territoriality principle, the courts must necessarily have to determine if there has been a spill over of the reputation and goodwill of the mark used by the claimant who has brought the passing off action. In the course of such determination, it may be necessary to seek and ascertain the existence of not necessarily a real market but the presence of the claimant through its mark within a particular territorial jurisdiction in a more subtle form which can best be manifested by the following illustrations, though they arise from decisions of Courts which may not be final in that particular jurisdiction.’⁶⁵

‘Once the claimant who has brought the action of passing off establishes his goodwill in the jurisdiction in which he claims that the defendants are trying to pass off their goods under the brand name of the claimant’s goods, the burden of establishing actual confusion as distinguished from possibility thereof ought not to be fastened on the claimant.’⁶⁶

‘The possibility or likelihood of confusion is capable of being demonstrated with reference to the particulars of the mark or marks, as may be, and the circumstances surrounding the manner of sale/marketing of the goods by the defendants and such other relevant facts. Proof of actual confusion, on the other hand, would require the claimant to bring before the Court evidence which may not be easily forthcoming and directly available to the claimant. In a given situation, there may be no complaints made to the claimant that goods marketed by the defendants under the impugned mark had been inadvertently purchased as that of the plaintiff/claimant. The onus of bringing such proof, as an invariable requirement, would be to cast on the claimant an onerous burden which may not be justified. Commercial and business morality which is the foundation of the law of passing off should not be allowed to be defeated by imposing such a requirement. In such a situation, likelihood of confusion would be a surer and better test of proving an action of passing off by the defendants. Such a test would also be consistent with commercial and business morality which the law of passing off seeks to achieve. In the last resort, therefore, *it is preponderance of probabilities that must be left to judge the claim.*’⁶⁷

‘If goodwill or reputation in the particular jurisdiction (in India) is not established by the plaintiff, no other issue really would need any further examination to determine the extent of the plaintiff’s right in the action of passing off...’⁶⁸

Nandhini Deluxe v Karnataka Cooperative Milk Producers Federation Limited,⁶⁹ is a Division Bench decision of the Supreme Court. The judgment of the Court was delivered by Justice Dr A K Sikri. The Court relied on the principle of trademark law declared by the Court in *National Sewing Thread Co Ltd*⁷⁰ and applied the same to decide the case.⁷¹ The Court mentioned that these principles of law (on which the Court relied) ‘while interpreting the provisions of Trade and Merchandise Act, 1958 is equally applicable as it is unaffected by the Trade Marks Act, 1999 inasmuch as the main object

underlying the said principle is that the proprietor of a trade mark cannot enjoy monopoly over the entire class of goods and, particularly, when he is not using the said trade mark in respect of certain goods falling under the same class. In this behalf, we may usefully refer to Section 11 of the Act which prohibits the registration of the mark in respect of the similar goods or different goods but the provisions of this Section do not cover the same class of goods.’⁷²

Wockhardt Limited v Torrent Pharmaceuticals Limited,⁷³ is a Division Bench decision of the Supreme Court. The judgment on behalf of the Court was delivered by Justice Rohinton Fali Nariman. The Court relied on the principles of trademark law declared in *Laxmikant V Patel v Chetanbhai Shah*,⁷⁴ *S Syed Mohideen v P Sulochana Bai*⁴⁶ and *Satyam Infoway Ltd v Siffynet Solutions Pvt Ltd*.⁷⁵

Trademark Law Declared in the Third Decade of Twenty-First Century

A total of 9 decisions on the trademark law were delivered between 2020 to June 2023. Of these 9 decisions, 2 are Full Bench and 6 are Division Bench decisions. 1 case was decided by a Single Bench. The first reported decision from this decade is *International Association for Protection of Intellectual Property (India Group) v Union of India*,⁷⁶ and the last is *Srei Multiple Asset Investment Trust Vision India Fund v Deccan Chronicle Marketeers*.⁷⁷

International Association for Protection of Intellectual Property (India Group) v Union of India,⁷⁶ is a Full Bench decision of the Court. Justice S Ravindra Bhat authored the unanimous judgment on behalf of the Court. The Court in this case did not declare any principle of trademark law.

Rajkumar Sabu v Sabu Trade Private Limited,⁷⁸ is a Single Bench decision delivered by Justice Aniruddha Bose. Provisions of the Trade Marks Act find a reference in this case but no principle of trademark law was declared by the Court.

Renaissance Hotel Holdings Inc v B Vijaya Sai,⁷⁹ is a Full Bench decision of the Supreme Court. Justice B R Gavai delivered the unanimous judgment on behalf of the Court. Following principles of trademark law may be culled out from the decision:

- (i) ‘Section 29 (2) of the (Trade Marks Act)...reveal(s) that a registered trade mark would be infringed by a person, who not being a registered proprietor or a person using by way of

- permitted use, uses in the course of trade, a mark which because of the three eventualities mentioned in clauses (a), (b) and (c), is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark. The first eventuality covered by clause (a) being its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark. The second one covered by clause (b) being its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark. The third eventuality stipulated in clause (c) would be its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark.’⁸⁰
- (ii) ‘[W]hen the mark of the defendant is identical with the registered trade mark of the plaintiff and the goods or services covered are similar to the ones covered by such registered trade mark, it may be necessary to prove that it is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark. Similarly, when the trade mark of the plaintiff is similar to the registered trade mark of the defendant and the goods or services covered by such registered trade mark are identical or similar to the goods or services covered by such registered trade mark, it may again be necessary to establish that it is likely to cause confusion on the part of the public. However, when the trade mark of the defendant is identical with the registered trade mark of the plaintiff and that the goods or services of the defendant are identical with the goods or services covered by registered trade mark, the Court shall presume that it is likely to cause confusion on the part of the public.’⁸¹
- (iii) ‘The use by the defendant of the trade mark of the plaintiff is a *sine qua non* in the case of an action for infringement.’⁸²
- (iv) ‘[T]he legislature has used the word ‘or’ after clauses (a) and (b) in subsection (2) of Section 29 of the said Act, it has used the word ‘and’ after clauses (a) and (b) in subsection (4) of Section 29 of the said Act...[T]he legislative intent is very clear. Insofar as sub-section (2) of Section 29 of the said Act is concerned, it is sufficient that any of the conditions as provided in clauses (a), (b) or (c) is satisfied.’⁸³
- (v) ‘[I]n case of an eventuality covered under clause (c) of subsection (2) of Section 29 in view of the provisions of sub-section (3) of Section 29 of the said Act, *the Court shall presume that it is likely to cause confusion on the part of the public.*’⁸³
- (vi) ‘The perusal of sub-section (4) of Section 29 of the said Act would reveal that the same deals with an eventuality when the impugned trade mark is identical with or similar to the registered trade mark and is used in relation to goods or services which are not similar to those for which the trade mark is registered. Only in such an eventuality, it will be necessary to establish that the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark. The legislative intent is clear by employing the word “and” after clauses (a) and (b) in sub-section (4) of Section 29 of the said Act. Unless all the three conditions are satisfied, it will not be open to the proprietor of the registered trade mark to sue for infringement when though the impugned trade mark is identical with the registered trade mark, but is used in relation to goods or services which are not similar to those for which the trade mark is registered. To sum up, while sub-section (2) of Section 29 of the said Act deals with those situations where the trade mark is identical or similar and the goods covered by such a trade mark are identical or similar, sub-section (4) of Section 29 of the said Act deals with situations where though the trade mark is identical, but the goods or services are not similar to those for which the trade mark is registered.’⁸⁴
- (vii) ‘The perusal of Section 30 (1) of the said Act would reveal that for availing the benefit of Section 30 of the said Act, it is required that the twin conditions, *i.e.*, the use of the impugned trade mark being in accordance with the honest practices in industrial or commercial matters, and that such a use is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trade mark, are required to be fulfilled. It is again to be noted that in sub-section (1) of Section 30 of the said Act, after clause (a), the word used is ‘and’, like

the one used in sub-section (4) of Section 29 of the said Act, in contradistinction to the word 'or' used in subsection (2) of Section 29 of the said Act. The High Court has referred only to the condition stipulated in clause (b) of sub-section (1) of Section 30 of the said Act ignoring the fact that, to get the benefit of sub-section (1) of Section 30 of the said Act, both the conditions had to be fulfilled. Unless it is established that such a use is in accordance with the honest practices in industrial or commercial matters, and is not to take unfair advantage or is not detrimental to the distinctive character or repute of the trade mark, one could not get benefit under Section 30 (1) of the said Act.⁸⁵

- (viii) 'It is...trite law that while interpreting the provisions of a statute, it is necessary that the textual interpretation should be matched with the contextual one. The Act must be looked at as a whole and it must be discovered what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place...'⁸⁶
- (ix) 'One of the purposes for which the said Act has been enacted is prohibiting the use of someone else's trade mark as a part of the corporate name or the name of business concern. If the entire scheme of the Act is construed as a whole, it provides for the rights conferred by registration and the right to sue for infringement of the registered trade mark by its proprietor...By picking up a part of the provisions in subsection (4) of Section 29 of the said Act and a part of the provision in subsection (1) of Section 30 of the said Act and giving it a textual meaning without considering the context in which the said provisions have to be construed, in our view, would not be permissible.'⁸⁷
- (x) '[I]n order to avail the benefit of Section 30...apart from establishing that the use of the impugned trade mark was not such as to take unfair advantage of or is detrimental to the distinctive character or repute of the trade mark, it is also necessary to establish that such a use is in accordance with the honest practices in industrial or commercial matters.'⁸⁸

Shiv Developers v Aksharay Developers,⁸⁹ is a Division Bench decision of the Supreme Court. Justice Dinesh Maheshwari delivered the unanimous judgment on behalf of the Court. The Court relied on the earlier decided trademark cases and the principles laid down therein to decide the case.

Ajanta LLP v Casio Keisanki Kabushiki Kaisha d/b/a Casio Computer Company Limited,⁹⁰ is a Division Bench decision of the Supreme Court. Justice L Nageswara Rao authored the judgment. No principle of trademark law was declared by the Court in this case.

Shyam Sel and Power Limited v Shyam Steel Industries Limited,⁹¹ is a Division Bench decision of the Supreme Court. Justice B R Gava delivered the unanimous judgment on behalf of the Court. The Court declared that 'It is a settled principle of law that while considering the question of grant of interim injunction, the courts are required to consider the three tests of prima facie case, balance of convenience and irreparable injury.'⁹²

Kangaro Industries (Regd) v Jaininder Jain,⁹³ is a unanimous order by a Full Bench. No principle of trademark law was declared in this case.

Godrej Sara Lee Limited v Excise and Taxation Officer-cum-Assessing Authority,⁹⁴ is a Division Bench decision of the Supreme Court. The unanimous judgment of the Court was delivered by Justice Dipankar Datta. No such principle of trademark law was declared by the Court in this case. While deciding the case, the Court referred its decision in *Whirlpool Corporation v Registrar of Trade Marks, Mumbai*.⁹⁵

The last reported decision is *Srei Multiple Asset Investment Trust Vision India Fund v Deccan Chronicle Marketeers*,⁹⁶ a Division Bench decision. Justice Ajay Rastogi delivered the judgment on behalf of the Court. No principle of trademark law was declared by the Supreme Court.

Conclusion

In these two decades of twenty-first century, the Supreme Court with an average of 1.86 (point eight six) cases per year decided the trademark cases, which is less than 44 (point four four) compared to the cases decided in the first decade of this century,⁹⁷ and 1.48 (point four eight) higher than the total number of cases decided in the twentieth century (five decades).⁹⁸ Considering all the direct and reported trademark decisions delivered till date (69), the maximum number of cases are decided by Division

Bench (50), then by Full Bench (18) and by Single Bench (1). Of the total, Division Bench decisions constitute 72.46 (point four six) percent, Full Bench 26.08 (point zero eight) percent, and Single Bench 1.44 (point four four) percent. What is common in all the reported trademark decisions is the absence of separate concurring and dissenting judgments. Interestingly, in the last 73 years, the constitutionality of the Trade Marks Act (or any of the IP statutes) has not been challenged before the Court. Unlike the twentieth century decisions, where 2 Chief Justices of India and 1 Acting Chief Justice were on the bench in 3 cases, and 1 judgment was authored by the Acting Chief Justice, in the twenty-first century, no sitting Chief Justice of India was on the bench in any of the 50 decided cases.

In no case, the constitutionality of the Trade Marks Act or the Trademarks Rules was challenged. Had it been challenged, a decision from the Constitution Bench was expected. Had there been separate concurring or dissenting judgments, it would have given a sound reason to look into them more critically. Still, what is not clear from the judicial decisions is that on what grounds the benches are constituted to hear and decide the IP cases. The inconsistent way of writing judgments may be considered as the only consistency in the judicial approach. Of course, the consistency is constant due to the absence of any concurring or dissenting judgments.

In a total of 15 decisions the Court has declared the principles of trademark law. Of these 15 decisions, the Court interpreted the text of the statutes in 7 decisions, interpreted-constructed in 1 decision, interpreted and reiterated its earlier decisions in 3 decisions, and only reiterated its earlier judicial position to decide the case in 4 cases. In one decision, the Court reiterated the principles of the Contract Act²⁹ in deciding the trademark case but without interpreting the provisions of the Trade Marks Act. The Court also using interpretation-construction powers, resolved some conflicts and conundrums between the text of the different statutes. It seems that nothing has changed in the approach of the Court in trademark cases and the *raison d'être* is protection of interest of *unwary purchaser* from confusion or deception and protection of the rights of the trademark owner. It seems that the two protections are the “two ends” of the trademark law.⁹⁹ Emphasis of the Court has remained upon the welfare of

consumers.¹⁰⁰ Moreover, the ratiocination reveals that the trademark monopoly is not only tolerated but is also encouraged for maximizing the happiness of the *unwary customer* and minimizing his pains.¹⁰¹

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- 23 (2011) 1 SCC 125, 139–140.
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- 37 (2015) 13 SCC 466.
- 38 (2015) 10 SCC 161.
- 39 The Code of Civil Procedure, 1908 (Act 5 of 1908).
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- 96 (2023) 7 SCC 295.
- 97 In the first decade of twenty-first century (2000–2009), the Supreme Court has on an average decided 2.3 (point three) trademark cases in a year; or one trademark case in 158.82 (point eight two) days or in .43 (point four three) years.
- 98 In the twentieth century (from 28 January 1950 to 1999), the Supreme Court has on an average decided .38 (point three eight) trademark case in a year; or one trademark case in 978.94 (point nine four) days, or in 2.68 (point six eight) years.
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