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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 12th October, 2022*

+ CS(COMM) 60/2021

TRIUMPHANT INSTITUTE OF
MANAGEMENT EDUCATION PVT. LTD. Plaintiff

Through: Mr. J. Sai Deepak, Ms. Bitika
Sharma, Mr. Luv Virmani and Ms. Aadya Chawla,
Advocates.

versus

TIMES COACHING CENTRE Defendant

Through: Ms. Rajeshwari H. and Ms. Nupur A.
Goswami, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

I.A. 1607/2021(under Order 39 Rules 1 and 2 CPC, by Plaintiff) **and**
7291/2021 (under Order 39 Rule 4 CPC, by Defendant)


1. This judgment will dispose of the aforesaid two applications, one preferred on behalf of the Plaintiff, in which an *ex-parte ad-interim* injunction was granted on 02.02.2021, and the other filed by the Defendant seeking vacation of the said order.







2. Plaintiff has filed this suit seeking permanent injunction restraining the Defendant and all others acting on its behalf from providing any services, advertising and/or promoting and/or using the trademark 'TIMES COACHING CENTRE', domain name www.timescoaching.in, mobile application 'Times Coaching' and YouTube channels as referred to in the

plaint and/or any other trademark/trade name/label/device/domain name deceptively similar to Plaintiff's trademarks 'T.I.M.E. – TRIUMPHANT INSTITUTE OF MANAGEMENT EDUCATION' and 'T.I.M.E. TUTIONS', including the device marks, as well as 'time4education' and domain name www.time4education.com.

3. It is averred that Plaintiff Company, incorporated under the laws of India in 1992, is a renowned owner of a comprehensive chain of coaching Institutes and training centres operating across India, offering premium education and training for various National and State-level Examinations including CAT, GATE, CLAT, IIT-JEE, GMAT, etc., as also for Bank and SSC Competitive Examinations as one-stop shop for aspiring candidates to get into leading Institutes. The Institutes are run under the trademark and style T.I.M.E., which is an acronym derived from the name of the Company, i.e., TRIUMPHANT INSTITUTE OF MANAGEMENT EDUCATION.

4. Plaintiff's trademarks are stated to be registered as word and device marks in classes 16, 38 and 41 and the registrations are valid and subsisting. Having started its operation in 1992, currently Plaintiff has over 214 offices in 109 towns across the country and trains more than 1,50,000 aspirants for competitive examinations every year. Since 2015, Plaintiff's turnover has been consistently more than Rs. 300 crores annually. The trademark registrations are as follows:-


Sr. No.	Trademark	Application No.	Class	Date of Application	User date
1.	T.I.M.E. Triumphant Institute of Management Education	1343168	41	09/03/2005	01/05/1992
2.	 Triumphant Institute of Management Education	1408314	41	22/12/2005	01/05/1992

3.		1725338	16	26/08/2008	01/09/1992
4.	time4education	2559941	38	05/07/2013	25/08/2000
5.	time4education	2712609	38	04/04/2014	25/08/2000
6.	 Triumphant Institute Of Management Education	2712599	38	04/04/2014	01/05/1992
7.	T.I.M.E. TRIUMPHANT INSTITUTE OF MANAGEMENT EDUCATION	2712597	38	04/04/2014	01/05/1992
8.	T.I.M.E. TUTIONS (WORD)	2820862	16	01/10/2014	26/06/2011
9.	T.I.M.E. TUTIONS (WORD)	2820864	38	01/10/2014	26/06/2011
10.	T.I.M.E. TUTIONS (WORD)	2820866	41	01/10/2014	26/06/2011
11.		2820863	38	01/10/2014	26/06/2011
12.		2820865	41	01/10/2014	26/06/2011
13.		2820861	16	01/10/2014	26/06/2011
14.		3201141	41	03/03/2016	04/02/2016

5. In the interest of full disclosure, it is averred in the plaint that Plaintiff had earlier adopted and used the mark 'TIME' in respect of its services, however, in view of a settlement reached between the Plaintiff and TIME Inc., USA, in a suit being CS(OS) 1389/2003, Plaintiff changed its mark/logo from TIME to T.I.M.E. – TRIUMPHANT INSTITUTE OF MANAGEMENT EDUCATION.

6. Going by the averments in the plaint, the grievance agitated by the Plaintiff before this Court is the alleged dishonest adoption and use by the Defendant of nearly identical or deceptively similar trademark 'Times' and trade name 'TIMES COACHING CENTRE'. Plaintiff alleges infringement of its trademarks as well as passing off by the Defendant, violating its statutory and common law rights.

7. It is further averred that Defendant is a proprietorship entity, engaged in providing educational and coaching services to the students under the aforementioned trademark and is also operating a website www.timescoaching.in for the same. On its website Defendant claims to be the best online coaching centre in Delhi, which aids and assists the students to crack all one-day exams.

8. Plaintiff avers that Defendant has filed an application for registration of the impugned trademarks  /TIMES COACHING CENTRE on 30.11.2019 on a 'proposed to be used basis' in class 41 for services 'Education; providing of training; Entertainment; and Sporting and Cultural Activities' and Plaintiff has filed an opposition on 26.05.2020, which is pending.

9. Arguing on behalf of the Plaintiff, Mr. J. Sai Deepak, learned counsel, submitted that Plaintiff is a registered proprietor of the trademarks T.I.M.E. - TRIUMPHANT INSTITUTE OF MANAGEMENT EDUCATION, T.I.M.E. TUTIONS, other variants of T.I.M.E., logos thereof and time4education (hereinafter collectively referred to as 'trademarks') and is entitled to their exclusive use in relation to the services, in respect of which they are registered as well as to obtain relief against infringement by third

parties, under Section 28 of the Trade Marks Act, 1999 (hereinafter referred to as the 'Act'). Defendant is providing identical services, i.e., coaching for various competitive examinations online, using the trademark TIMES COACHING CENTRE, domain name www.timescoaching.in, mobile application 'Times Coaching' and YouTube Channels 'Times Coaching'; 'Times Defence' and 'Times Teaching', thereby causing confusion amongst the general public, amounting to infringement of Plaintiff's registered trademarks under Section 29 of the Act. Defendant is engaged in a competitive business in identical market and has in bad faith and dishonestly adopted the impugned trademarks to gain unfair advantage of Plaintiff's immense reputation and cleverly pass off its services as that of the Plaintiff. The end-users of the services of the Defendant, who are primarily aspiring students, are likely to be confused that Defendant is a branch of or is in some manner associated/affiliated with the Plaintiff. The fact that Defendant's coaching services are online does not lessen the likelihood of confusion between the two competing marks for two reasons viz. (a) Plaintiff also has online presence through its website, YouTube channel and mobile applications; and (b) classes in which Plaintiff's trademark are registered cover both physical and online services within its scope. The misrepresentation by the Defendant is causing loss of reputation, monetary loss and tarnishment of Plaintiff's image in public. Even assuming that Defendant has changed the trademark to FUTURE TIMES COACHING CENTRE, it makes no difference, as by mere use of the prefix 'FUTURE', the deceptive similarity to Plaintiff's trademarks is not reduced.

10. Learned counsel argued that Plaintiff's registered trademarks have acquired enormous reputation and goodwill all over India and is the

preferred choice for students/candidates desirous of appearing for various examinations. Through uninterrupted and continuous usage of the trademarks, the same have come to be exclusively associated with the Plaintiff and none else. Plaintiff's trademarks denote quality study material and educational services and have become synonymous with a high degree of excellence. The services offered by the Plaintiff under the various trademarks of which T.I.M.E. is a dominant part and has acquired distinctiveness, have come to be known and recognized in the trade circles in a short span of time. The huge reputation and goodwill earned by the Plaintiff is evident from the annual turnover in the last 9 years, more particularly, from 2015 onwards, when the brand turnover has been over Rs. 300 crores. Plaintiff has been vigilant in protecting its rights in the trademark and in a number of proceedings previously instituted has obtained *ex-parte* injunction orders with respect to the impugned trademarks/labels 'TIME' and 'TIMES'.

11. It was urged that Defendant is unable to provide any justification or reasonable explanation for adopting the word TIMES as a part of its trademark/trade name for provision of identical services, particularly, when it is not the Defendant's case that it was unaware of Plaintiff's tuition/coaching/educational training services, under its registered trademarks.

12. It was argued that comparison of the two rival trademarks/logos would show that Defendant has adopted and copied the prominent and essential feature of Plaintiff's trademark, i.e., 'T.I.M.E.', which is distinctive of Plaintiff's services in the field of coaching centres. The domain name of the Defendant www.timescoaching.in is also a slavish copy of Plaintiff's domain name www.time4education.com, with a minor difference of

character '4' and 'S'. Adoption of prominent and essential features of the registered trademarks amounts to infringement, as held in *M/s Kirorimal Kashiram Marketing & Agencies Pvt. Ltd. v. M/s. Shree Sita Chawal Udyog Mill*, 2010 SCC OnLine Del 2933; *Max Healthcare Institute Limited v. Sahrudya Health Care Private Limited*, 2017 SCC OnLine Del 12031; and *V Guard Industries Ltd. v. Crompton Greaves Consumer Electricals Ltd.*, 2022 SCC OnLine Del 1593.

13. Refuting and opposing the contentions raised on behalf of the Plaintiff, Ms. Rajeshwari H., learned counsel appearing on behalf of the Defendant, at the outset, submitted that during the pendency of the suit, Defendant has adopted the trademark 'FUTURE TIMES COACHING CENTRE', which is dissimilar to Plaintiff's trademarks and Defendant undertakes to use only the newly adopted trademarks, in future. Since Defendant is no longer using the Trademark TIMES COACHING CENTRE, no relief can be claimed in the suit and the injunction application deserves to be dismissed on this ground alone.

14. Without prejudice to the said stand, it was contended that Plaintiff is not the registered proprietor of the trademarks TIME or TIMES. Significantly, in 2003 Plaintiff was using the trademark TIMES when, TIME Inc. an Institute in USA filed a suit being CS(OS) 1389/2003 against the Plaintiff. The suit was settled and Plaintiff agreed not to use the trademark/word TIME and to use 'T.I.M.E' in conjunction with the name of its Institute, i.e., Triumphant Institute of Management Education. Plaintiff has thus given up all rights to the trademark TIME, as the settlement binds the Plaintiff and operates as an estoppel not only against the parties to the settlement but also *qua* Plaintiff's rights against all third parties. Plaintiff

cannot thus assert that TIMES is deceptively similar to T.I.M.E. Reliance is placed on the judgment in *B.L. Sreedhar and Others v. K.M. Munireddy (Dead) and Others, (2003) 2 SCC 355*.

15. It was contended that Plaintiff does not have registrations in the trademarks TIME or TIMES and over the years, Plaintiff has not even endeavoured to apply for the same. In the absence of registration in the words TIME/TIMES, mere registrations in the device marks as a whole, will not confer the right to exclusivity/monopoly over part of the trademark, i.e., T.I.M.E. Plaintiff has cleverly drafted the plaint, particularly para 7, to create a wrong and false impression that it is the proprietor of the mark T.I.M.E. instead of T.I.M.E. – TRIUMPHANT INSTITUTE OF MANAGEMENT EDUCATION. Section 17 of the Act provides that when a trademark consists of several matters, its registration shall confer on the proprietor exclusive right to use of the trademark taken as a whole. Section 17(2)(a)(ii) of the Act further provides that when a trademark contains any part which is not separately registered as the trademark, the registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trademark so registered. Therefore, the attempt to dissect the word T.I.M.E. from the whole trademark and compare it with the impugned trademark alleging deceptive similarity, is impermissible in law.

16. For the proposition that where the registration is in a device or a label mark, the whole mark is required to be examined and dissection into its constituent parts for comparison with the impugned trademark, cannot be permitted, reliance was placed on the judgments in *Vardhman Buildtech Pvt. Ltd. & Ors. v. Vardhman Properties Ltd., 2016 SCC OnLine Del 4738*

and *Skyline Education Institute (India) Private Limited v. S.L. Vaswani and Another*, (2010) 2 SCC 142.

17. It was next contended that the trademark TIMES is common to trade and there are several entities who have been using TIMES, with or without suffix/prefix, such as TIMES by Bennett, Coleman & Co. Ltd. since 1992; TIMES ACADEMY – R.P. Sharad since 1996; TIMES – Kamlesh Harjani since 1984; TIMES PUBLISHING HOUSE – Times Publishing House since 1984; and TIMES CENTRE OF MEDIA STUDIES – Bennett, Coleman & Co. Ltd. since 1989. TIME is generic word with a dictionary meaning and being non-distinctive, cannot be monopolized by the Plaintiff. It is a settled position in law that trademarks which are generic and common to trade are weak marks and not entitled to protection under the Act.

18. It was further contended that Plaintiff's and Defendant's trademarks are dissimilar. Plaintiff uses the word T.I.M.E. as an acronym, as a part of its trademarks T.I.M.E. – TRIUMPHANT INSTITUTE OF MANAGEMENT EDUCATION, in a peculiar style, with gaps and dots, which is clearly distinct from Defendant's user of 'TIMES', both in the earlier trademark and the changed trademark 'FUTURE TIMES COACHING CENTRE'. Rival trademarks are thus visually, structurally and phonetically different. Additionally, respective parties operate in different spheres and fields. Plaintiff has been providing coaching in Management courses for the past several years and is a new entrant in SSC and Bank Exams, which is evident from the documents filed by the Plaintiff, more particularly, the order dated 17.08.2009, passed by this Court and the judgment dated 30.04.2014, in *CS(OS) 664/2013*, wherein Plaintiff's Director had stated that Plaintiff provides training in various Management courses. The advertisements and

the newspaper articles filed by the Plaintiff also demonstrate their ability to provide training in Management courses only. Compared and contrasted with this, Defendant is a *bona fide* user of its trademarks, continuously and exclusively since 2018-19, with respect to coaching services for SSC and Bank PO Exam to aspirants in Tier-II and III cities and there is no likelihood of confusion amongst the class of consumers. In any case, the target consumers are students who will search and apply their mind before investing money in a coaching centre and no student would be confused into believing that Defendant's coaching centre has any association with the Plaintiff. Reliance was placed on the judgment in *J.K. Oil Industries v. Adani Wilmar Limited, 2010 SCC OnLine Del 586*, to contend that identity/similarity of registered trademark with the impugned mark is a *sine qua non* for a claim for infringement. It was also strenuously urged that Defendant operates in its own specialised field and has no intent to misrepresent and/or encash on Plaintiff's reputation and the trademarks being dissimilar, no case of passing off is made out against the Defendant.

19. Learned counsel distinguished the judgments relied on behalf of the Plaintiff. It was submitted that in *M/s Kirorimal Kashiram Marketing & Agencies Pvt. Ltd. (supra)*, the competing marks were 'DOUBLE DEER' and 'GOLDEN DEER', which were deceptively similar, however, the competing trademarks in the present case are dissimilar and the mischief lies in comparing the word TIMES, dissecting the same from the whole trademark in which the Plaintiff has registration. In *Max Healthcare Institute Limited (supra)*, the mark of the Plaintiff was 'MAX/MAX HOSPITAL' whereas the impugned mark was 'MAX CURE'. It was held that MAX is not an abbreviation in English language and was distinctive.

Quite apart, in the present case, TIMES is a dictionary and generic word and Defendant is not using T.I.M.E. but FUTURE TIMES. The judgment in *V Guard Industries Ltd. (supra)* does not assist the Plaintiff since the essential feature, if any, of its trademark (device) is T.I.M.E. and not TIMES.

20. Arguing in rejoinder, learned counsel for the Plaintiff submitted that the Settlement Agreement entered into between the Plaintiff and TIME Inc. has no relevance to the present suit for infringement and passing off, as the Agreement merely identified the manner of Plaintiff's use from a visual perspective, so as to distinguish it from TIME Inc. and does not prevent the Plaintiff from phonetically referring to it as TIME or from restraining third parties from using trademarks deceptively similar to the prominent and essential feature of its trademark, i.e., T.I.M.E., especially with respect to identical/similar services. This is supported by the fact that Settlement Agreement has no condition or restriction and there is no entry in the Register of Trade Marks, limiting the scope of Plaintiff's rights in its registered trademarks. It is natural that the general public would continue to phonetically refer to Plaintiff's mark as TIME.


21. It was argued that the defence of Section 17 of the Act is unavailable to the Defendant, inasmuch as Plaintiff also has registrations over the word mark T.I.M.E. TUTIONS. It was reiterated that the principle of 'anti-dissection' and identification of 'dominant mark' are not antithetical to one another and rather complement each other as held in several judgments. In any case, it is a well-settled principle that defence under Section 17 of the Act is not available to a party who infringes the prominent part of another party's trademarks. Reliance was placed on the judgments in *United Biotech*

Pvt. Ltd. v. Orchid Chemicals & Pharmaceuticals Ltd. & Ors., 2012 SCC OnLine Del 2942 and Shree Nath Heritage Liquor Pvt. Ltd. v. M/s. Allied Blender & Distillers Pvt. Ltd., 2015 SCC OnLine Del 10164.

22. It was also argued that third party use cannot be taken as a cushion by the Defendant to claim non-infringement and absolve itself and that too, without showing substantial use of such alleged infringers, which would pose a threat to the distinctiveness of Plaintiff's trademarks. Courts have time and again held that a registered proprietor of a trademark is not expected to run after every infringer, until the use of the trademark affects its business operations, substantially. Refuting the contention of the Defendant that the trademarks TIME/TIMES are generic, it was contended that the Defendant having itself applied for registration of the trademark TIMES COACHING CENTRE cannot claim that the said words are generic. Moreover, the word T.I.M.E. has acquired distinctiveness because of the long, extensive and uninterrupted user as a part of Plaintiff's trademarks and is exclusively associated with the Plaintiff's coaching Institutes.

23. I have heard the learned counsels for the parties and examined their respective contentions.

24. At the outset, pertinent it is to note that when the suit was filed Plaintiff had alleged infringement against the Defendant for use of

trademarks TIMES COACHING CENTRE/  and had sought a restraint against use of the impugned trademarks as well as any other trademark, identical with or deceptively similar to its registered trademarks amongst other reliefs. However, during the pendency of the suit, Defendant has purportedly adopted different trademarks 'FUTURE TIMES











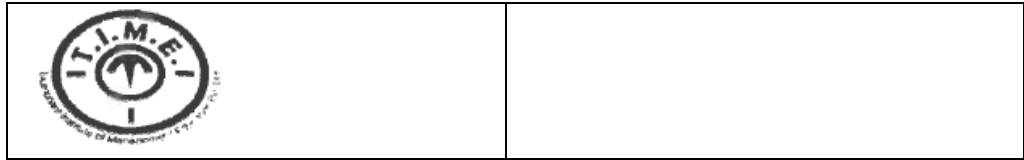
FUTURE TIMES
COACHING CENTRE

COACHING CENTRE’/‘ FUTURE TIMES COACHING CENTRE ’ as stated in the written submissions dated 08.06.2022 and also argued during the course of hearings. An undertaking was also given that Defendant shall henceforth run its Institute under the newly adopted trademarks. Learned counsel for the Plaintiff had resisted this stand on the ground that Defendant continues to use the word ‘TIMES’ for its services and displays the same prominently on its websites etc. and the newly adopted trademark ‘FUTURE TIMES COACHING CENTRE’ is deceptively similar to Plaintiff’s registered trademarks, as the essential part of the trademark T.I.M.E. continues to be a part of Defendant’s trademarks. Mere addition of ‘FUTURE’ is inconsequential, according to the Plaintiff.

25. It is an undisputed position that the trademarks of the Plaintiff are registered whereas the impugned trademarks are unregistered. Being a registered proprietor of the trademarks, Plaintiff is entitled to use the same exclusively as well as to protect them from infringement by third parties under Section 28(1) of the Act. Under Section 29(2) of the Act, a registered trademark is 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 trademark which because of its identity with or similarity to the registered trademark and similarity/identity with the goods or services covered by such registered trademark, is likely to cause confusion on the part of the public or likely to have an association with the registered trademark. Therefore, the first issue that pronouncedly emanates is if the competing trademarks can be said to be identical/deceptively similar. The trademarks in question are not

identical and examination is limited to see if they are similar/deceptively similar. A comparative of the trademarks of the Plaintiff and the trademarks of the Defendant, both at the time of filing of the suit as well as those which the Defendant is stated to have now adopted is as follows:-

Plaintiff's trademarks	Defendant's trademarks
<p>T.I.M.E. Triumphant Institute of Management Education</p>	<p>TIMES COACHING CENTRE</p>
 <p>Triumphant Institute of Management Education</p>	
	<p>FUTURE TIMES COACHING CENTRE (adopted during the pendency of the suit)</p>
<p>time4education</p>	 <p>FUTURE TIMES COACHING CENTRE (adopted during the pendency of the suit)</p>
<p>time4education</p>	
 <p>Triumphant Institute Of Management Education</p>	
<p>T.I.M.E. TRIUMPHANT INSTITUTE OF MANAGEMENT EDUCATION</p>	
<p>T.I.M.E. TUTIONS (WORD)</p>	
<p>T.I.M.E. TUTIONS (WORD)</p>	
<p>T.I.M.E. TUTIONS (WORD)</p>	
	
	
	



26. In view of the categorical stand of the Defendant that it has adopted the trademark FUTURE TIMES COACHING CENTRE and would continue to do so in future, it is to be first seen if this singular factor is sufficient to dismiss the claim of the Plaintiff for injunction, keeping in backdrop that Plaintiff contends that Defendant continues to use the word 'Times' prominently not only as a part of the changed mark, but also standalone, as well as the relief sought in the plaint for injunction against any mark which is deceptively similar to Plaintiff's trademarks. In my view, the points adumbrated by the Plaintiff would require consideration.

27. Two vexed questions arise at this stage: (a) whether T.I.M.E is an essential and dominant part of Plaintiff's marks; and (b) whether FUTURE TIMES COACHING CENTRE is *prima facie* deceptively similar to the Plaintiff's registered trademarks.

28. In the context of determining similarity of trademarks, in an action for infringement, the Supreme Court in ***Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories, AIR 1965 SC 980***, observed as follows:-

“29. When once the use by the defendant of the mark which is claimed to infringe the plaintiff's mark is shown to be “in the course of trade”, the question whether there has been an infringement is to be decided by comparison of the two marks. Where the two marks are identical no further questions arise; for then the infringement is made out. When the two marks are not identical, the plaintiff would have to establish that the mark used by the defendant so nearly resembles the plaintiff's

registered trade mark as is likely to deceive or cause confusion and in relation to goods in respect of which it is registered (Vide Section 21). A point has sometimes been raised as to whether the words “or cause confusion” introduce any element which is not already covered by the words “likely to deceive” and it has sometimes been answered by saying that it is merely an extension of the earlier test and does not add very materially to the concept indicated by the earlier words “likely to deceive”. But this apart, as the question arises in an action for infringement the onus would be on the plaintiff to establish that the trade mark used by the defendant in the course of trade in the goods in respect of which his mark is registered, is deceptively similar. This has necessarily to be ascertained by a comparison of the two marks — the degree of resemblance which is necessary to exist to cause deception not being capable of definition by laying down objective standards. The persons who would be deceived are, of course, the purchasers of the goods and it is the likelihood of their being deceived that is the subject of consideration. The resemblance may be phonetic, visual or in the basic idea represented by the plaintiff's mark. The purpose of the comparison is for determining whether the essential features of the plaintiff's trade mark are to be found in that used by the defendant. The identification of the essential features of the mark is in essence a question of fact and depends on the judgment of the Court based on the evidence led before it as regards the usage of the trade. It should, however, be borne in mind that the object of the enquiry in ultimate analysis is whether the mark used by the defendant as a whole is deceptively similar to that of the registered mark of the plaintiff.”

29. Test of comparison of rival trademarks was laid down way-back in 1906 in ***Pianotist Co. Ltd.'s application [(1906) 23 RPC 774]***, and relevant passage is 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 to be applied. You must consider the nature and

kind of customer who would be likely to buy those goods. In fact, you must consider all the surrounding circumstances; and you must further consider what is likely to happen if each of those trade marks is used in a normal way as a trade mark for the goods of the respective owners of the marks. If, considering all those circumstances, you come to the conclusion that there will be a confusion, that is to say, not necessarily that one man will be injured and the other will gain illicit benefit, but that there will be a confusion in the mind of the public which will lead to confusion in the goods — then you may refuse the registration, or rather you must refuse the registration in that case.”

30. In ***M/s. Amar Singh Chawal Wala v. M/s. Shree Vardhman Rice and Genl. Mills, 2009 SCC OnLine Del 1690***, a Division Bench of this Court emphasised on the relevance of phonetic similarity between the constituent elements, comprised in competing trademarks. Plaintiff therein was engaged in business of selling rice under the registered trademarks ‘Golden Qilla’ and ‘Lal Qilla’, while Defendant was selling the same product under the trademark ‘Hara Qilla’. The Court came to a conclusion that there was every possibility of confusion in the mind of the purchaser of rice as the trademarks were phonetically similar and were being utilized for the same commodity, i.e., rice. Courts have time and again emphasised on the importance of phonetic similarity in judging if the two trademarks are deceptively similar and affirmed and reaffirmed that phonetic similarity cannot be jettisoned, even though the manner in which the competing words/marks are written is different. [***Ref.: Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73*** and ***Amritdhara Pharmacy v. Satya Deo Gupta, (1963) 2 SCR 484***]

31. Before examining if the two competing trademarks in the present case are deceptively similar, it would be pertinent to address the contention raised by the Defendant that Plaintiff cannot assert an exclusive right on T.I.M.E. since it has registration for the device mark as a whole. According to the Defendant, Plaintiff holds proprietary rights in the trademarks T.I.M.E. - TRIUMPHANT INSTITUTE OF MANAGEMENT EDUCATION/



etc. and not in TIME or TIMES. Trademarks would have to be read as a whole and Plaintiff is not entitled to dissect the trademarks into their component parts and then compare them with corresponding parts in the impugned trademarks, to allege likelihood of confusion. This plea is predicated on the provisions of Section 17 of the Act. Coupled with the said contention is another argument that the words 'TIME/TIMES' are generic and non-distinctive in character and cannot be monopolized by the Plaintiff, to sue the Defendant for infringement.

32. This contention of the Defendant, according to this Court, is misconceived, in view of the judgment of the Division Bench of this Court in *M/s. South India Beverages Pvt. Ltd. v. General Mills Marketing Inc. & Anr.*, 2014 SCC OnLine Del 1953, which is a complete answer. The controversy before the Division Bench was with respect to the two competing marks being 'HAAGEN DAZS' of the Plaintiff, in respect of ice-creams and frozen yogurts and the trademark "D'DAAZS" in respect of ice-creams and frozen desserts. The Court, laying stress on the anti-dissection rule, observed that the rule mandated that Courts while dealing with cases of trademark infringement involving composite marks, must consider them in their entirety rather than truncating or dissecting them into

component parts and making comparison with the corresponding parts of the rival trademarks, to determine likelihood of confusion, *raison d'être*, underscoring the said principle being that commercial impression of a composite trademark on an ordinary prospective buyer is created by the trademark as a whole and not by its component parts. Having so observed, the Court further noted that it needs no reiteration that while the trademark is to be considered in entirety, yet it is permissible to accord more or less importance or 'dominance' to a particular portion or element of a trademark in cases of composite marks. Some of the observations of the Division Bench relevant to the present case are as under:-

“21. The view of the author makes it scintillatingly clear, beyond pale of doubt, that the principle of ‘anti dissection’ does not impose an absolute embargo upon the consideration of the constituent elements of a composite mark. The said elements may be viewed as a preliminary step on the way to an ultimate determination of probable customer reaction to the conflicting composites as a whole. Thus, the principle of ‘anti-dissection’ and identification of ‘dominant mark’ are not antithetical to one another and if viewed in a holistic perspective, the said principles rather compliment each other.

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23. It is also settled that while a trademark is supposed to be looked at in entirety, yet the consideration of a trademark as a whole does not condone infringement where less than the entire trademark is appropriated. It is therefore not improper to identify elements or features of the marks that are more or less important for purpose of analysis in cases of composite marks.

24. In this regard we may fortify our conclusion by take note of the decision reported as 405 F. Supp. 530 (1975) Eaton Allen Corp. v. Paco Impressions Corp. The facts of the said case reveal that the plaintiff manufactured coated paper under the registered trademark ‘Super-Ko-Rec-Type’. The defendant

manufactured and advertised a similar product under the mark 'Super Type' and 'Super Type-7'. The defendant contended that the only similarity between the said marks was use of the words 'Super' and 'Type', terms which were neither significant parts of the plaintiff's registered trademark nor protectable as a matter of law. The court held that the consideration of a trademark as a whole does not preclude infringement where less than the entire trademark is appropriated.

25. Therefore, the submission of the appellant-defendant predicated upon the principle of 'anti-dissection' that action for infringement would not lie since use of the word 'D'DAAZS' does not result in complete appropriation of the respondent-plaintiff's mark 'HAAGEN DAZS', which is to be viewed as an indivisible whole, is liable to be rejected.

26. Dominant features are significant because they attract attention and consumers are more likely to remember and rely on them for purposes of identification of the product. Usually, the dominant portion of a mark is that which has the greater strength or carries more weight. Descriptive or generic components, having little or no source identifying significance, are generally less significant in the analysis. However, words that are arbitrary and distinct possess greater strength and are thus accorded greater protection.[174 F. Supp. 2d 718, 725 (M.D. Tenn. 2001) Autozone, Inc. v. Tandy Corporation]

27. It would be pertinent to recollect that in the present case, the mark of the respondent-plaintiff- 'HAAGEN DAZS', is a unique combination of Danish-sounding words, which have no recognised meaning whatsoever in any language or etymology. Evidently, the owner of the mark coined these arbitrary words in order to make its brand name sound original or unique.

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29. Furthermore, we would be failing to notice that there exists a high degree of phonetic similarity between the mark of respondent-plaintiff 'DAZS' and mark of the appellant-defendant 'D'DAAZS'."

33. Reference may also be made to another judgment of the Division Bench of this Court in *United Biotech Pvt. Ltd. (supra)*, wherein the registered trademark of the Appellant was 'FORZID' in class 05 and Respondent filed application for removal of the mark, on the ground that it was deceptively similar to an earlier registered trademark 'ORZID', (label mark), registered in the name of Respondent No. 1 therein, in class 05. The IPAB allowed the rectification application and the learned Single Judge dismissed the writ petition, challenging the said order. In an intra-court Appeal filed by the Appellant, the principal argument of the Appellant was that Respondents' assertion of statutory right in the word 'ORZID' was contrary to provisions of Section 17 of the Act, which bestow no right on part of the registered trademark. Relying on the judgment of the Supreme Court in *Ramdev Food Products (P) Ltd. v. Arvinbhai Rambhai Patel and Others, AIR 2006 SC 3304*, the Division Bench held that though 'ORZID' was a label mark, the word 'ORZID' contained therein was worthy of protection. Para 26 of the judgment in *United Biotech Pvt. Ltd. (supra)*, is as under:-

“26. We find that the learned Single Judge rightly held that when a label mark is registered, it cannot be said that the word mark contained therein is not registered. We, thus, are of the opinion that although the word “ORZID” is a label mark, the word “ORZID” contained therein is also worthy of protection. The learned Single Judge has rightly observed that the judgment of the Supreme Court in Ramdev Food Products Ltd. (supra) is the complete answer. This aspect is considered and the argument of the appellant is rejected in the following words:

“27. On whether the OCPL could successfully ask for rectification for UBPL's word mark FORZID notwithstanding that OCPL held registration only for a

label mark, the judgment of the Supreme Court in Ramdev Food Products Ltd. v. Arvindbhai Rambhai Patel, (2006) 8 SCC 726 : AIR 2006 SC 3304 is a complete answer. The Court there referred to an earlier decision in Registrar of Trade Marks v. Ashok Chandra Rakhit, AIR 1955 SC 558, which concerned the proprietary mark 'Shree' which formed part of the device as a whole and was an important feature of the device. The Supreme Court observed that registration of a trade mark as a whole would give the proprietor "a right to the exclusive use of word 'Shree' as if separately and by itself." Therefore it would not be correct for UBPL to contend that the registration held by OCPL does not cover the word mark ORZID.'"

34. Apposite it would be to refer to another judgment of this Court in ***Himalaya Drug Co. v. S.B.L. Ltd., 2012 SCC OnLine Del 5701***, wherein the Court elucidated on the 'essential and prominent' features of the trademark for the purpose of determining disputes relating to infringement of trademark and I quote the relevant passages as follows:-

"44. The courts have propounded the doctrine of prominent and essential feature of the trade mark for the purposes of adjudication of the disputes relating to infringement of trade mark. While deciding the question of infringement, the court has to see the prominent or the dominant feature of the trade mark. Even the learned single judge agrees to this proposition when the learned judge quotes McCarthy on Trade Marks that all composite marks are to be compared as whole. However, it is dependent on case to case to basis as a matter of jury question as to what can be the possible broad and essential feature of the trade mark in question.

45. It is settled law that where the defendant's mark contains the essential feature of the plaintiff's mark combined with other matter, the correct approach for the court is to identify an essential feature depending particularly "on the court's own

judgment and burden of the evidence that is placed before the Court". In order to come to the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are differences, rather overall similarity has to be judged. While judging the question as to whether the defendant has infringed the trade mark or not, the court has to consider the overall impression of the mark in the minds of general public and not by merely comparing the dissimilarities in the two marks.

46. The ascertainment of an essential feature is not to be by ocular test alone but if a word forming part of the mark has come in trade to be used to identify the goods of the owner of the trade mark, it is an infringement of the mark itself to use that word as the mark or part of the mark of another trader for which confusion is likely to result. The likelihood of confusion or deception in such cases is not disproved by placing the two marks side by side and demonstrating how small is the chance of error in any customer who places his order for goods with both the marks clearly before him, for orders are not placed, or are often not placed, under such conditions. It is more useful to observe that in most persons the eye is not an accurate recorder of visual detail and that marks are remembered rather by general impressions or by some significant detail than by any photographic recollection of the whole". In the decision reported as (1951) 68 RPC 103 at page 105, De Cordova v. Vick Chemical Co., the plaintiffs were the proprietors of a label containing the words "Vick's VapoRub" as the essential feature, registered in Jamaica, and the defendants used a similar label with the words "Karsote Vapour Rub" as the essential feature, and it was shown that the expression "VapoRub" had become distinctive of the plaintiff's goods in Jamaica, an action for infringement was successful. (See De Cordova v. Vick Chemical Co. (supra), (1941) 58 RPC 147, Saville Perfumery Ld. v. June Perfect Ld., (1972) 1 SCC 618 : AIR 1972 SC 1359 at 1362, National Chemicals and Colour Co. v. Reckitt and Colman of India Limited and AIR

1991 Bom 76, National Chemicals and Colour Co. v. Reckitt and Colman of India Limited)

47. Identification of essential features of the trade marks has been discussed in details in the case of Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories (supra):—

“In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark would be immaterial;.....

“When once the use by the defendant of the mark which is claimed to infringe the plaintiff's mark is shown to be “in the course of trade”, the question whether there has been an infringement is to be decided by comparison of the two marks. Where the two marks are identical no further questions arise; for then the infringement is made out....”

35. Applying the principles enunciated in the aforesaid judgments to the factual contours of this case, in my *prima facie* view, the contention of the Defendant predicated on the provisions of Section 17 of the Act and the anti-dissection rule, has no merit. The rule does not impose an absolute embargo on consideration of dominant and essential parts of a whole trademark. As

held by the Division Bench, principle of anti-dissection and identification of ‘dominant mark’ are not antithetical to one another and viewed holistically, they complement each other. Examining the device mark of the Plaintiff, this Court is of the *prima facie* view that the acronym ‘T.I.M.E.’ is a dominant part and essential feature of the device mark of the Plaintiff and it can assert a right on its exclusive use, based on registration in the device mark as a whole. This *prima facie* conclusion stems from visually looking at the trademark, i.e., the lettering style, its disposition, font size, colour and the placement.

36. It is now to be seen if the impugned trademarks are similar to the dominant part of Plaintiff’s registered trademarks, in a manner that is likely to cause confusion on the part of the public or likely to have an association with the registered trademarks. On a visual comparison of the rival marks, *prima facie* it appears that Defendant has copied the dominant part of Plaintiff’s device and word marks, i.e., T.I.M.E. Contention of the Defendant that it has not appropriated the mark of the Plaintiff as it is using





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trademarks FUTURE TIMES COACHING CENTRE/ and not T.I.M.E., is misplaced, in view of the observations of the Division Bench of this Court in *M/s. South India Beverages Pvt. Ltd. (supra)*, wherein it is clearly observed that if essential/dominant feature is copied, it is not a defence to infringement that whole of the mark is not appropriated. Comparing ‘T.I.M.E.’ and ‘TIMES’, this Court finds that the two are phonetically identical and it bears repetition to reiterate that phonetic similarity or identity constitutes an important index of determining

similarity/ identity in the context of infringement. Plaintiff is right in its contention that the acronym ‘T.I.M.E.’ and the word ‘TIME’ would be identical in pronunciation and confusion on account of phonetic identity cannot be ruled out. The two words are also visually deceptively similar, save and except, that in Plaintiff’s trademarks, ‘T.I.M.E.’ is used in a manner that the letters are separated with dots, which in my view, is a trivial dissimilarity to overcome deceptive similarity of the two words. Defendant has copied essential feature of the trademarks of the Plaintiff, i.e., ‘T.I.M.E.’, which has become distinctive of Plaintiff’s trademarks and the services rendered under them and in my *prima facie* view, even the changed trademarks of the Defendant, i.e., FUTURE TIMES COACHING CENTRE (word and device), on account of their deceptive similarity, are unlikely to reduce deception or confusion, amongst unwary purchasers with average intelligence and imperfect recollection.

37. Defendant has sought to raise a defence that word ‘TIMES’ is a word used in common parlance, has a dictionary meaning and is descriptive besides being common to trade. In order to deal with this defence, this Court alludes to a judgment of this Court in *Central Park Estates Pvt. Ltd. and Others v. Godrej Skyline Developers Private Limited and Another, 2019 SCC OnLine Del 11580*. In the said case, the rival marks for judicial scrutiny were ‘CENTRAL PARK’ of the Plaintiffs and ‘GODREJ

CENTRAL PARK/  and  of the Defendants. Both the issues that arise in the present case had arisen in the said case and therefore in my view, the judgment fits the present case aptly. The two contentions raised by the Defendants therein were:

(a) Plaintiffs have a label/device mark and cannot claim right to the words CENTRAL PARK; and (b) CENTRAL PARK is purely descriptive and in public domain with a dictionary meaning and incapable of distinctiveness. The Court applied the prominent mark test and held that the essential feature of Plaintiffs' mark is CENTRAL PARK, which was copied by the Defendants and there was overall similarity in the competing marks. With respect to the second issue, the Court observed that 'CENTRAL PARK' as per the Oxford Dictionary was a large public park in the centre of Manhattan in New York City and no doubt, the two English words were used co-jointly, however, the mark was not readily connectable to the business of the Plaintiff in real estate and therefore was not descriptive of the products. In *H&M Hennes & Mauritz AB & Anr. v. HM Megabrands Pvt. Ltd. & Ors.*, 2018 SCC OnLine Del 9369, the Court while dealing with the competing marks 'H&M' and 'HM' held that a word, even if generic, if applied to a business with which the word is unrelated, is indeed to be protected and merely because it is an alphabet or acronym is immaterial. Applying the principles to the present case, T.I.M.E. is an acronym of Plaintiff's Company's name and wholly unconnected with the business of the Plaintiff and therefore, entitled to protection in law.

38. Reliance was placed by the Defendant on the judgment in *Vardhman Buildtech Pvt. Ltd. & Ors. (supra)*, in which the trademark 'VARDHMAN PLAZAS' was under judicial scrutiny and Respondent was claiming exclusivity in respect of the word 'VARDHMAN'. The Court held that Respondent had the option to make an application for registering the word 'VARDHMAN' as a separate trademark but chose not to do so and in view

of Section 17 of the Act, the registration of the trademark as a whole will not confer on the Respondent the exclusive right to use part of the label or trademark. Defendant's reliance on the judgment, in my view, is misplaced and the answer to this plea lies in the various judgments aforementioned, as well as in the judgment in case of *J.K. Oil Industries (supra)*, cited by the Defendant itself. In para 8 of the said judgment, the Court held that registered proprietor may be able to protect a part of a registered trademark, if he is able to show that it is not common to trade or that it has obtained distinctive character. In the present case, dominant part of the trademark, i.e., 'T.I.M.E.' has, in my *prima facie* view, acquired distinctiveness and services offered by the Plaintiff using the acronym as a part of its trademarks have come to be associated with the Plaintiff and none else. Plaintiff has placed material on record pointing to its formidable and stellar reputation, popularity and success. The judgment relied upon is, therefore, wholly inapplicable to the facts of the present case.

39. Before drawing curtain on this issue, it would be important to deal with a somewhat connected argument of the Defendant that the word 'TIMES' is common to trade and in support thereof, Defendant has enumerated few trademarks, where 'TIMES' is used with a suffix or by itself.

40. Defendant has, in the written statement, enumerated the trademarks comprising of the word 'TIMES' as well as the classes for which they are registered. A bare perusal of the table shows that the trademark mentioned at serial no. 1 is registered in class 01, serial no. 2 in class 05, serial no. 3 in class 07, serial nos. 4-20 in class 09, serial nos. 22-25 in class 16, serial no. 21 in class 11, serial no. 26 in class 25, serial no. 27 in class 35, serial nos.

28-29 in class 37, serial no. 30 in class 39, serial nos. 35-36 in class 42, serial no. 37 in class 45, while serial nos. 31-34 in class 41.

41. Be it noted that the trademarks of the Plaintiff which are in *lis* before this Court are registered in class 41, i.e., coaching, education, training and sporting and cultural activities, etc. The Institute renders services for coaching and training aspirants for various competitive examinations such as CAT, CLAT. The illustrations given by the Defendant in support of the plea that 'TIMES' is common to trade cannot inure to its advantage as most of the trademarks cited are in different classes and the services are wholly unrelated to the services rendered by the Plaintiff. As far as the trademarks at serial nos. 31-34 are concerned, it was argued by learned counsel for the Plaintiff, during the course of hearing that these Institutions have closed down and this argument was not rebutted on behalf of the Defendant. Moreover, apart from mentioning the name of the Institutes, the class of registration and the user detail, Defendant has not provided any further details of the activities carried out by these Institutes. On an independent search on the Google, it is noticed that no information is available with respect to three Institutes and in respect of one, i.e., Times School of Journalism, it is seen that it was conducting PG Diploma Journalism Programme, which is currently stated to be suspended. Therefore, the Defendant has been unable to establish a *prima facie* case of the trademark T.I.M.E. being common to trade. In any case, Plaintiff's inaction against third parties cannot constitute a valid defence for the Defendant. The matter can be seen from another angle. Even assuming that there are entities who are using the trademark 'TIMES', the Plaintiff is not expected to sue all infringers who may not be affecting its business. In

National Bell Co. And Another v. Metal Goods MFG. Co. (P) Ltd. And Another, (1970) 3 SCC 665, the Supreme Court held that the proprietor of a trademark need not take action against infringement which does not cause prejudice to its distinctiveness. I may only refer to a passage in this context from the judgment in ***Express Bottlers Services Private Ltd. v. Pepsico Inc. & Ors., 1988 SCC OnLine Cal 62***, which is extracted hereunder:-

“.....To establish the plea of common use, the use by other persons should be shown to be substantial. In the present case, there is no evidence regarding the extent of the trade carried on by the alleged infringers or their respective position in the trade. If the proprietor of the mark is expected to pursue each and every insignificant infringer to save his mark, the business will come to a standstill. Because there may be occasion when the malicious persons, just to harass the proprietor may use his mark by way of pinpricks.... The mere use of the name is irrelevant because a registered proprietor is not expected to go on filing suits or proceedings against infringers who are of no consequence... Mere delay in taking action against the infringers is not sufficient to hold that the registered proprietor has lost the mark intentionally unless it is positively proved that delay was due to intentional abandonment of the right over the registered mark. This Court is inclined to accept the submissions of the respondent No. 1 on this point... The respondent No. 1 did not lose its mark by not proceeding against insignificant infringers...”

42. Relevant it is to allude to ***Dr. Reddy's laboratories Ltd. v. Reddy Pharmaceuticals Limited, 2004 SCC OnLine Del 668***, where this Court held as under:-

“16. ...

the owners of trade marks or copy rights are not expected to run after every infringer and thereby remain involved in litigation at the cost of their business time. If the impugned infringement is too trivial or insignificant and is not capable of harming their business interests, they may overlook and ignore petty violations till they assume alarming proportions. If a road side Dhaba puts up a board of “Taj Hotel”, the owners of Taj Group are not expected to swing into action and raise objections forthwith. They can wait till the time the user of their name starts harming their business interest and starts misleading and confusing their customers.”

43. The next plea raised by the Defendant and which is relevant for the sake of completeness to decide the issue of infringement under Section 29(2)(b) of the Act is that the services of the Defendant are entirely different. While the Plaintiff focuses on providing coaching/training for management courses, Defendant is a *bona fide* user of the trademark for providing coaching to SSC and Bank PO examination aspirants in Tier II and III cities *albeit* Plaintiff is now expanding and entering into the segment of the Defendant and creating hurdles for small coaching centres. This plea of the Defendant, in my opinion, is not well founded. Plaintiff in response to the said averment in the written statement has categorically refuted the same in the replication and has stated that Defendant has concealed the fact that Plaintiff is providing coaching services for all competitive examinations in all cities including Tier-I cities like Delhi as well as online coaching services which can be accessed by students throughout the country. This stand of the Plaintiff was not traversed or refuted by the Defendant. In this Court’s *prima facie* view, the services provided by the Defendant are similar, if not wholly identical to the Plaintiff.

44. Plaintiff has also succeeded in establishing *prima facie* long and continuous use of its trademarks as well as the number of Institutes it runs across the country, such that the acronym T.I.M.E., because of its stellar reputation come to be associated with Plaintiff's educational and training/coaching services. Plaintiff is thus *prima facie* correct in its submission that because of the commonality in the services of the respective parties, the public at large and more particularly, the students would get confused with the origin of services offered by the Defendant and mistake the same to be that of the Plaintiff, on account of the deceptive similarity in the acronym T.I.M.E. and TIMES in the Defendant's trademarks. The confusion will be compounded because of the deceptive similarity in the domain names. It needs to be noted, at this stage, that Plaintiff has placed on record screenshots from the website and the YouTube channel of the Defendant, reflecting the usage of the trademark by the Defendant. A bare perusal of the screenshots indicates that Defendant is advertising and promoting its Institute and services in a manner that the word TIMES is appearing very prominently and conspicuously in comparison to the other parts of the trademarks and needless to state that this is with a view to highlight the same and encash on the reputation of the Plaintiff. Since the word TIMES appears prominently in the advertisements and the field of activity of the Defendant is similar to that of the Plaintiff, likelihood of confusion amongst the students, desirous of applying for the courses to prepare for the competitive examinations, cannot be ruled out. In fact, it may be noted that even currently, Defendant is using the word 'TIMES' prominently and 'TIMES Coaching' in the description while advertising its services. Screenshots are placed hereunder, for ready reference:-

Future Times Coaching - YouTube x

youtube.com/c/TimesCoaching1/about

times coaching

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Our aim is to bring revolution in the education System of our country

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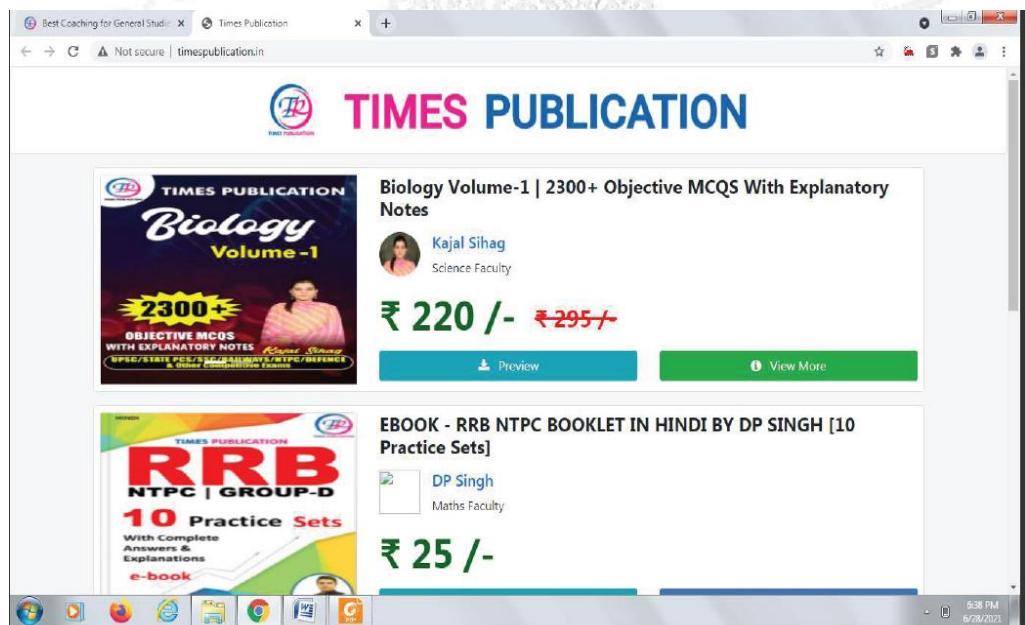
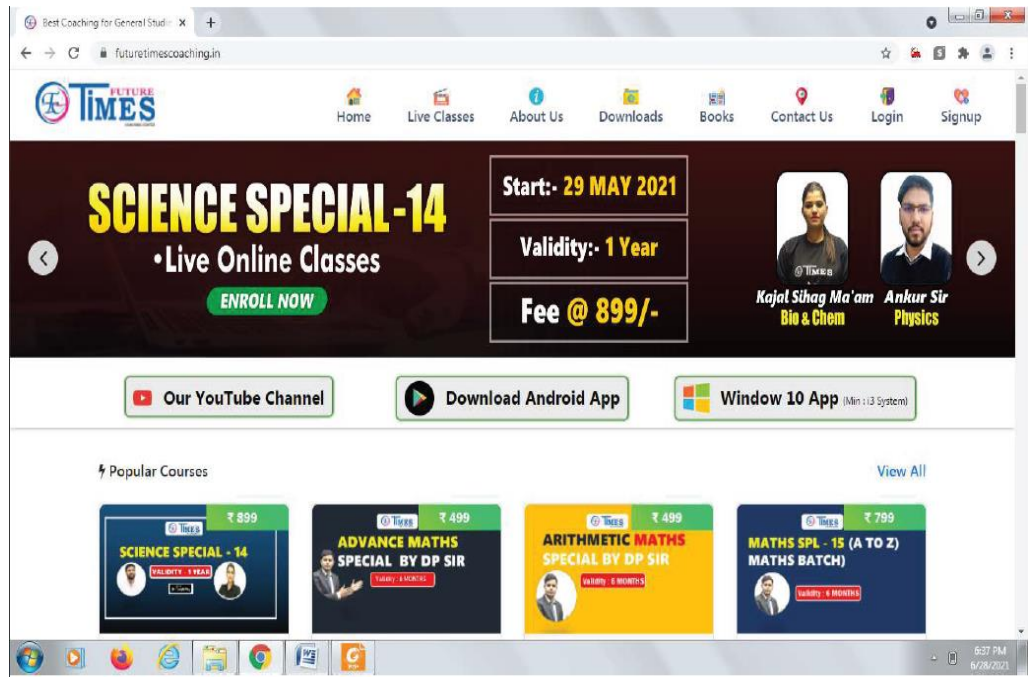
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Video Title	Duration	Views	Streamed
GEOGRAPHY SPECIAL -5 (सौमा विवाद) DEMO CLASS-05 BY RAJ RANA SIR	1:29:01	904 views	Streamed 6 hours ago
#DAILY CURRENT AFFAIRS LIVE CLASS-13 HINDI / ENGLISH रोज सुबह 7:00AM ताइम 1:20:19	1:20:19	3.8K views	Streamed 7 hours ago
DSSSB -2021 SPECIAL BATCH MATHS CLASS-0... BY MANOJ SIR	42:51	748 views	Streamed 18 hours ago
UPSI 2021 FASTTRACK BATCH -4 LCM & HCF BY MANOJ SIR	1:34:56	2.6K views	Streamed 18 hours ago
UPSSSC-PET MATHS DEMO CLASS-03 BY DP...	1:03:02	1.2K views	Streamed 19 hours ago

4:23 PM 6/18/2021



45. In the present case, on account of similarity in the trademarks and similar services rendered by the Plaintiff and the Defendant, the confusing similarity is likely to be of a high degree. Thus, this Court *prima facie* holds that on account of similarity of the rival trademarks and similarity of the

services, there is a likelihood of confusion in the consumers and the ingredients of Section 29(2)(b) of the Act are fulfilled. Plaintiff has established a *prima facie* case of infringement against the Defendant.

46. This Court also notices that several interim orders have been passed by this Court granting interim protection to the Plaintiff with respect to the acronym 'T.I.M.E.', against user by third parties, in respect of coaching/training Institutes, where the impugned marks are TIME/TIMES. The interim orders are primarily predicated on phonetic identity between the acronym T.I.M.E. and the impugned word TIME/TIMES as well as commonality in activity. In fact, a Division Bench of this Court in ***FAO(OS)(COMM) 87/2019*** had, as an interim measure, restrained the Respondent therein from using the trademark/trade name TIME/T.I.M.E./TIME+, on the ground that the Plaintiff herein who was the Appellant in the said case was a registered proprietor with immense reputation, running a chain of more than 270 Institutes and the nature of business of the Appellant and Respondent being identical, there was every likelihood that students would be misled *albeit* the appeal finally ended in a settlement between the parties. No doubt, interim orders do not constitute judicial precedents, however, the mere fact that several Courts have in their wisdom granted interim injunctions in favour of the Plaintiff, in respect of its acronym T.I.M.E. does show *prima facie* the strength of the trademarks and the need to protect them, at this stage.

47. At this stage, I may also deal with another contention of the Defendant, which was strenuously pressed by the learned counsel that Plaintiff is estopped from contesting the use of the trademark 'TIMES' against any third party on account of a settlement entered into with TIME

Inc. in *CS(OS) 1389/2003*. I am afraid even this contention is bereft of merit. The settlement entered into between the Plaintiff and TIME Inc. has no relevance in the present suit for infringement and passing off and can only bind the parties to the *lis* in the said suit. The settlement, in my *prima facie* view, cannot prevent or debar the Plaintiff from protecting its rights in the registered trademarks, whose essential part is the word ‘T.I.M.E.’, against the third parties, with similar services. As rightly pointed out by learned counsel for the Plaintiff the object of the Settlement Agreement was to create a distinction between the visual depiction of the trademarks of the signatory parties and cannot jettison phonetic similarity of its marks *qua* a third party in another matter. In this view, the judgment in the case of *B.L. Sreedhar (Supra)*, relied upon by the Defendant, is inapplicable to the facts of the present case.

48. The next plank of the argument of the learned counsel for the Plaintiff is that the actions of the Defendant tantamount to passing off its services under the impugned trademarks, domain name, mobile application, YouTube channels and other platforms.

49. Passing off is a common law remedy premised on the principle that no one has a right to represent his goods or services as those of someone else’s and grants protection of goodwill in business against misrepresentation caused by another entity or person in the course of trade. The essential elements of the action of passing off have been emphasised time and again as: (a) misrepresentation made by a trader in course of trade to prospective customers; (b) calculated to injure the business or goodwill of another trader [*Ref.: Erven Warnink Besloten Vennootschap and Another Appellants and J. Townend & Sons (hull) Ltd. And Another Respondents, [1979] 3*

WLR 68]. This Court has rendered *prima facie* finding in the earlier part of the judgment that essential/dominant part of the Plaintiff's trademark is visually similar and phonetically identical to the Defendant's impugned trademarks and that the services are also similar.

50. Plaintiff has *prima facie* established that it has formidable and immense reputation and goodwill. It is stated that it commenced running of coaching Institutes in 1992 and in 1995, the Company came into existence. Plaintiff has grown into a specialist multi-location, multi-programme training provider and is run on corporate lines. Currently, Plaintiff has over 214 offices in 109 towns and cities across the country and offers training for National level exams such as CAT, GATE, CLAT, IIT foundation programmes, State-level examinations, etc. Plaintiff has also expanded into a broader arena of education and training with pre-school chain with currently 391 pre-schools across 97 cities and towns. Plaintiff's coaching Institutes train more than 1,50,000 aspirants for competitive examinations each year. The brand turnover of the Plaintiff was approximately Rs.312.83 crores in the year 2018-19 alone. It is further averred that 'T.I.M.E.' coaching and studying material has produced exceptional results which is evident from the CAT 2016 exam wherein 12 students scored 100 percentile. Plaintiff has also averred that it provides coaching services by way of recorded video lectures to its students and its website is fully operational. Plaintiff also owns YouTube channel and runs various mobile applications such as 'TIME FOR CAT' and 'TIME FOR GATE' etc. Plaintiff thus has a reputation in respect of the services it provides and use of 'TIMES' in the impugned trademark for similar services is a misrepresentation by the Defendant which is likely to cause confusion

and deception amongst the consumers and injure the reputation of the Plaintiff.

51. In my *prima facie* view, the use of the word 'TIMES' by the Defendant for which it has no plausible explanation, is dishonest and only with a view to misrepresent to the general public that Defendant's Institute has an association or a connection with Plaintiff's Institute or is a branch thereof and is calculated to injure its goodwill and reputation. The very fact that the Defendant has chosen to adopt the word TIMES as a part of the trademark, without disclosing a single reason as to why it chose only the word TIMES for similar educational and training programmes, is by itself indicative of the intent to confuse the consumers and encash on Plaintiff's reputation. Plaintiff has thus established a *prima facie* case of passing off against the Defendant.

52. For all the aforesaid reasons, the *ex-parte ad-interim* injunction granted *vide* order dated 02.02.2021 is hereby confirmed, with the modification that the injunction shall apply to the newly adopted trademarks



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'FUTURE TIMES COACHING CENTRE'/'FUTURE TIMES COACHING CENTRE'. It is, however, made clear that Defendant is at liberty to run its Institute under any other trademark including FUTURE COACHING CENTRE without using the word 'TIMES'.

53. The view expressed by this Court in the present judgment is only *prima facie* and tentative and shall have no bearing on the final adjudication of this suit.

54. I.A. 1607/2021 is hereby allowed and I.A. 7291/2021 is dismissed, in the aforesaid terms.

I.A. 5981/2021 (under Order 39 Rule 2A CPC, by Plaintiff), and **8030/2021** (under Order 39 Rule 2A CPC, by Plaintiff)

55. It was strenuously contended by learned counsel for the Plaintiff that Defendant is continuing to violate the injunction order and is guilty of contempt. The stand of the Defendant *per contra* is that during the pendency of the suit, it has changed the trademark from TIMES COACHING CENTRE to FUTURE TIMES COACHING CENTRE and the changed trademark is not deceptively similar to Plaintiff's trademark T.I.M.E. – TRIUMPHANT INSTITUTE OF MANAGEMENT EDUCATION. A detailed reply has been filed where an attempt has been made to distinguish the two rival trademarks visually, phonetically and structurally. An additional affidavit dated 23.05.2022 has been filed in which it is stated on behalf of the Defendant that after adopting the trademark FUTURE TIMES COACHING CENTRE, Defendant has changed the name of website, Facebook, Twitter, Instagram, YouTube channels, including the thumbnails of the impugned videos alleged to be infringing.

56. In the earlier part of the judgment, this Court has rendered a *prima facie* finding that the changed trademark of the Defendant FUTURE TIMES COACHING CENTRE is deceptively similar to the registered trademark of the Plaintiff. However, the question that arises in the present applications is whether the Defendant can be held guilty of contempt of the orders passed by this Court. It is a settled position in law that for bringing an action for civil contempt, Petitioner would have to satisfy the Court that the alleged contemnor has wilfully disobeyed or violated any order, direction, judgment

or any other process of the Court. 'Wilful' means an act or omission done voluntarily and intentionally with an intent to disobey or disregard the law. In *Kapildeo Prasad Sah and Others v. State of Bihar and Others, (1999) 7 SCC 569*, the Court observed that for holding the Respondent guilty of contempt, it has to be shown that there was wilful disobedience of the order of the Court. Power to punish for contempt is to be resorted to when there is clear violation of Court's order. Since notice of contempt and punishment has far reaching consequences, these powers should be invoked only when a clear case of wilful disobedience of Court's order is made out. At the same time, it is important to remember that disobedience of Court's order strikes at the very root of law on which our system of governance is based.

57. Judged on these parameters, this Court finds that act of the Defendant cannot be termed as wilful disobedience. The interim injunction granted by this Court restrained the Defendant from using the trademarks 'TIMES COACHING CENTRE' as well as the domain names, comprising the word 'TIMES COACHING', including any other trademark, label, etc. deceptively similar and infringing the Plaintiff's trademarks. The reply filed by the Defendant and the additional affidavit reflect that Defendant in its wisdom understood the injunction order to mean that it was restrained from using the trademarks 'TIMES COACHING CENTRE', domain name 'www.timescoaching.in', mobile application 'Times Coaching' and YouTube channels namely, 'Times Coaching', 'Times Defence' and 'Times Teaching'. With this understanding, Defendant changed the trademark to 'FUTURE TIMES COACHING CENTRE' in the belief that this would not be a violation of the injunction order.

58. From the arguments canvassed by the learned counsel for the Defendant and on a holistic reading of the reply/additional affidavit, I am of the view that the Defendant had no intent to violate the injunction order passed by this Court and changed the trademarks under the impression that the new trademarks were outside the scope of the interim order. It cannot be thus said that Defendant is guilty of 'wilful disobedience' of the injunction order passed by the Court. Applications, therefore, deserve to be dismissed, however, with costs, as the infringing trademarks remained on various platforms to the detriment of the Plaintiff.

59. Accordingly, the applications are dismissed with cost of Rs.20,000/- payable by the Defendant to Delhi High Court Bar Clerk's Association, within two weeks from today.

60. Applications stand disposed of.

JYOTI SINGH, J

OCTOBER 12, 2022/rk/shivam/sn

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