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

Date of Decision: 04th May, 2023

+ CS(COMM) 777/2022

JAQUAR COMPANY PVT LTD Plaintiff

Through: Mr. Kapil Wadhwa, Ms. Surya
Rajappan, Ms. Tejasvini Puri and
Ms. Vasanthi Hariharan, Advocates.

versus

VILLEROY BOCH AG & ANR. Defendants

Through: Mr. Uttam Datt, Mr. Dinesh Jotwani,
Mr. Harpreet Oberoi, Mr. Jitesh P.
Gupta, Ms. Sonakshi Singh, Mr.
Kumar Bhaskar, Mr. Rishi Raj
Sharma and Mr. Aman Sanjeev,
Advocates.

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

JUDGMENT

SANJEEV NARULA, J. (Oral)

I.A. 18241/2022 (for grant of interim injunction)

Trademark tussle: Artize v. Artis - who owns the artistic touch?

1. This suit relates to the clash between sanitary ware giants over their brand names. The Plaintiff, M/s Jaquar & Company Pvt. Ltd. [*hereinafter*, “**Jaquar**”] and the Defendants, Villeroy & Boch AG and Villeroy & Boch Sales India Pvt. Ltd. [*hereinafter collectively*, “**Villeroy**”] are two well-

established brands in the business of sanitary ware and bathroom fitting products. They are at loggerheads over the words “ARTIZE” used by Jaquar, and “ARTIS” used by Villeroy, both derivatives of the word “ART”. Jaquar asserts that they coined and adopted the fanciful trademark “ARTIZE” in 2008 and since then, have been continuously and uninterruptedly using the same for their luxury segment of sanitary ware. Villeroy, on the other hand, contests Jaquar’s proprietary claims, contending that “ARTIS” is a Latin term which means art, and thus, “ARTIZE” is nothing but a derivative of “ARTIS” and is purely descriptive, whereon no monopoly can be claimed. Furthermore, they argue that “ARTIS” is a sub-brand/range/collection used in conjunction with their well-known brand name Villeroy & Boch and therefore, such use does not amount to infringement or passing off Jaquar’s trademark.

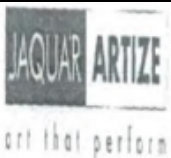





THE CASE SET UP BY JAQUAR

2. Mr. Kapil Wadhwa, counsel for Jaquar, presents the following arguments:

2.1. Jaquar is a market leader in the manufacturing and sale of diversified bathing solutions such as showers, faucets, bath tubs, spas, steam cabins, water heaters etc. It caters to various segments of the industry and customers under two ranges – “ESSCO” for the value products and “ARTIZE” for the luxury products. The trademark “ARTIZE” has garnered substantial reputation and goodwill on account of continuous and long use. Jaquar has spent considerably towards advertisement and promotion of their brand, including “ARTIZE”. Thus, by virtue of extensive use for over last fourteen years, the trademark “ARTIZE” has come to be associated solely and

exclusively with Jaquar.

2.2. Products under “ARTIZE” mark are sold extensively across the country, in over three hundred showrooms and the mark has gained popularity in India. Jaquar has also obtained trademark registrations for formative versions of the “ARTIZE” mark in classes 11 and 35, particulars whereof are as follows:

S.No.	Trademark	Application No.	Class	Date of application	Status
1.		1736192	11	24.09.2008	Registered
2.		2003072	11	03.08.2010	Registered
3.		2165292	11	24.06.2011	Registered
4.		4879936	11	25.02.2021	Registered
5.		4879937	35	25.02.2021	Registered
6.	ARTIZE -BORN from art	4879938	11	25.02.2021	Registered
7.		5250966	11	17.12.2021	Registered

2.3. In November, 2021, Jaquar became aware of Villeroy’s launch of

identical product range under the impugned mark “ARTIS” through an article on the website of Architectural Digest (India). Parties are market competitors and Villeroy is well-conversant with Jaquar’s “ARTIZE” products that are sold side-by-side at multiple outlets.

2.4. Upon knowledge of the infringing activities, Plaintiff issued a legal notice dated 26th November, 2021 to Defendant No. 2 [Indian subsidiary of Villeroy & Boch AG] calling upon them to cease and desist operations under the “ARTIS” mark, however, no response was received thereto. A follow-up legal notice was then issued on 15th June, 2022, to which, Villeroy replied that the two contesting marks are not similar and that the use of the brand name alongwith the impugned mark is a sufficient distinguishing factor, which avoids public confusion. This claim is completely misconceived as “ARTIZE” and “ARTIS” are virtually identical and deceptively similar.

2.5. “ARTIZE is an essential feature of Jaquar’s trademark registrations and subsequent adoption of a deceptively similar mark by Villeroy for identical goods amounts to infringement of Jaquar’s well-known “ARTIZE” mark under Section 29(1) of the Trademarks Act, 1999 and violation of their common law rights. Jaquar enjoys a market share of around 60% in India and thus, impugned actions of Villeroy are motivated with an intent to create confusion amongst the consumers, resulting in dilution of Jaquar’s mark. On the other hand, Villeroy has failed to prove any goodwill or reputation of the impugned mark “ARTIS”.

2.6. There is no delay and acquiescence on the part of the Plaintiff. Immediately upon learning of the impugned activities, Jaquar acted promptly and filed the instant suit.

2.7. Balance of convenience lies in favour of Jaquar and in case an interim injunction is not granted, they would suffer irreparable harm and loss.

2.8. To support his contentions, Mr. Wadhwa places reliance upon *Hem Corporation v. IOTC Ltd.*,¹ *Bata India v. Chawla Boot House*,² *Paridhi Udyog v. Jagdev Raj*,³ *Caterpillar Inc. v. Mehtab Ahmed*,⁴ and *Hindustan Pencils v. India Stationary*.⁵

VILLEROY'S DEFENCE TO JAQUAR'S CLAIMS

3. Controverting the aforementioned arguments, Mr. Uttam Datt, counsel for Villeroy, argues as under:

3.1. Defendant No. 1 [Villeroy & Boch AG], a 274 years-old company was founded in 1748 with headquarters in Mettlach, Germany. It has a global presence in the field of innovative and stylish sanitary ware. Villeroy is a luxury brand for bathroom products, catering to the elite-class who are brand conscious and has various series of products under the names "ARTIS", "COLLARO", "ANTHEUS", "ARCHITECTURA", "PINION", "FUTURION", "OBERON", "SQUARO", "VENTICELLO" etc. Such names are meant to distinguish the different ranges of products and are never meant to replace or minimise the value and popularity of the Villeroy & Boch brand. In fact, every such product prominently bears the Villeroy & Boch logo.

3.2. The impugned mark "ARTIS" is a Latin term and is the singular form of the Latin word "Ars" (meaning art) and as such, is used commonly across

¹ 2012 SCC OnLine Bom 551.

² 2019 SCC OnLine Del 8147.

³ 2019 SCC OnLine Del 8293.

⁴ 2002 SCC OnLine Del 865.

all industrial sectors, as evidenced by several documents placed on record. Significantly, Villeroy uses it only for a small subset/range/collection within the washbasin models offered by them. Out of 192 washbasin models available in India, “ARTIS” is only used in respect of less than 5 of them, in conjunction with the trademark/ house brand – “Villeroy & Boch” to denote an exclusive style and price range of washbasins. “ARTIS” is not even mentioned on the products and is only displayed as a label/ sticker on the packaging box or on the product catalogue (in print or on the global website) to identify the collection, but that too, is always used with the Villeroy & Boch logo.

3.3. Jaquar has been granted only composite device mark registrations; their wordmark registration is suffixed with words “Born from Art”. Therefore, they have no right in the word “ARTIZE” alone. It is a common dictionary word, which is incapable of registration in terms of Section 9 of the Trademarks Act. Further, as it is intended to suggest that Jaquar’s products are artistic, it is descriptive of the kind and quality of the products sold under the “ARTIZE” mark.

3.4. There has been a substantial delay in filing of the instant suit inasmuch as Villeroy launched the “ARTIS” segment of washbasins in 2015, but the present case was filed in 2021. By Jaquar’s own admission, Villeroy is their direct competitor and it is claimed that rival products are sold through common dealers. Thus, Jaquar would have known of the use of impugned mark from the start itself and chose to sit over their rights. Jaquar’s case is also hit by acquiescence as Villeroy has been using the “ARTIS” mark since 2015 *i.e.*, for more than seven years. Further, the

⁵ 1989 SCC OnLine Del 34.

“ARTIS” series was launched at an international Trade Fair called ISH held in Frankfurt, Germany, which is a mega-event to showcase sanitary installations, intelligent living and innovative building solutions. Jaquar was an active participant of the ISH Fair and thus, ought to have known of Villeroy’s launch. Since the launch, the rival products have been sold in India *via* the same dealers and distributors’ network. Villeroy has also actively promoted the “ARTIZE” range on various social media platforms since 2015 itself. Reliance is also placed upon an excerpt from 2015 edition of Villeroy’s magazine, which explains the inception and creation of “ARTIS” in the following words:

“Danish-German designer Gesa Hansen has developed the colour concept for Villeroy & Boch's Artis washbasin edition. Artis is white on the inside but colourful on the outside — with no fewer than 15 shades available.

The biggest challenge when it comes to coloured ceramics is "translating" the colour concept from paper into ceramic pigments. Samples are fired and initially evaluated purely in visual terms. "Based on past experience, we know roughly what pigments we need to mix into the basic glaze to create a certain colour," explains Stutz. If the result comes very close to the paper sample, it is defined even more closely using colorimeters. These determine the LAB values for both the paper sample and the glaze: L for Lightness, A for the red/green axis and B for the yellow/blue axis. The difference between the individual measurements for the two samples shows which pigments still need to be added to the glaze. Once all of the measurements are correct, the next step takes place at the plant, where the colour glaze for the item is tested and validated for production. Colour formulations and new methods like those being used for Artis are, of course, trade secrets. Arno Stutz: "I don't like the word 'secret', but we are talking about the expertise that sets us apart from the competition.”

3.5. Villeroy had been promoting and selling their products in India since 2015, but did not apply for registration of the “ARTIS” mark. It was not until they received a cease-and-desist notice from Jaquar that Villeroy took action to safeguard their products by submitting an application for registration of the mark with the European Union Intellectual Property

Office [“EUIPO”] in 2021.

3.6. “ARTIS” is neither phonetically nor visually or structurally identical to “ARTIZE”.

3.7 “ARTIS” products have also acquired a customer-base for their unique design and colour scheme of washbasins. Regardless, consumers purchasing the products would not associate the sub-brands “ARTIS” or “ARTIZE” with Villeroy or Jaquar, respectively. It is the Plaintiff’s house brand – Jaquar and Defendants’ house brand – Villeroy & Boch, that act as the source-identifier for the products. To cite an example, Villeroy’s “CELLINI” is a popular sub-brand, which is also used by Jaquar. Thus, if Jaquar’s arguments are accepted, they themselves would be indulging in passing off their products as that of Villeroy. Moreover, there is no likelihood of confusion between the two marks as Villeroy’s products are priced at a higher range as compared to Jaquar’s, resulting in a difference in targeted customers. Jaquar has not been able to demonstrate an intent to feed off the goodwill of their “ARTIZE” trademark on Villeroy’s part, which is an internationally well-reputed brand.

3.8. There is no case, let alone a *prima facie* case of infringement under Section 29(1) of the Trademarks Act. Owing to Jaquar’s acquiescence to use of impugned “ARTIS” mark, balance of convenience lies in favour of Villeroy. Further, both parties have been co-existing in the market since 2015, and therefore, an interim injunction must not be granted during the pendency of the suit.

3.9. To buttress the afore-noted submissions, reliance is placed upon

*Marico Ltd. v. Agrotech Foods Ltd.,*⁶ *M/s Bling Telecom Pvt. Ltd. v. Micromax Informatics Limited,*⁷ *IHHR Hospitality Pvt. Ltd. v. Bestech India Pvt. Ltd.,*⁸ *MESO Pvt. Ltd. v. Liberty Shoes Ltd.,*⁹ and *Phone Pe Pvt. Ltd. v. Resilient Innovations Pvt Ltd.*¹⁰

ANALYSIS AND FINDINGS

4. In light of the submissions advanced by both counsel, the issues that arise for consideration are organised under the following heads:

I. WHETHER THE TRADEMARK “ARTIS” IS DECEPTIVELY SIMILAR TO AND INFRINGING THE “ARTIZE” MARK

5. Undoubtedly, the two contested trademarks – “ARTIZE” and “ARTIS” – exhibit visual, phonetic, and structural similarities. Both words have etymological roots in the word ‘art’. They bear little variation, as the letters ‘ARTI’ are common to both marks, with the only difference being the addition of the letters ‘ZE’ at the end in Jaquar’s mark and ‘S’ in Villeroy’s mark which makes the pronunciation of the two words nearly identical. Pertinently, both marks are also associated with identical goods. Despite the afore-noted similarities between the two marks, Villeroy argues they are not ‘deceptively similar’ and do not constitute infringement under Section 29(1) of the Trademarks Act. They make several arguments in support of this claim:

⁶ 2010 SCC OnLine Del 3806.

⁷ 2010 SCC OnLine Del 4306.

⁸ 2012 SCC OnLine Del 2713.

⁹ 2019 SCC OnLine Bom 1506.

¹⁰ 2023 SCC OnLine Bom 764.

- (i) Jaquar lacks registration of the mark “ARTIZE” as a standalone wordmark and therefore, cannot claim proprietary rights over the word “ARTIZE” alone.
- (ii) The impugned mark “ARTIS” is always used in conjunction with their house mark “VILLEROY & BOCH”, indicating that the public is unlikely to be confused as to the origin of the goods.
- (iii) “ARTIS” is only a sub-brand of Villeroy for a specific range of products and is not being used in a trademark sense, thereby reducing the likelihood of confusion.
- (iv) The vast difference in prices between the rival products is sufficient to distinguish Villeroy’s goods from Jaquar’s and rules out the likelihood of confusion.
- (v) Jaquar's case is hit by estoppel, delay, laches and acquiescence.

Jaquar’s statutory rights in the word “ARTIZE”

6. Jaquar is the registered proprietor of the marks,



“ARTIZE – BORN from art”. All the aforementioned formative device marks contain the word “ARTIZE”. These registrations provide Jaquar with statutory rights under Section 17 of the Trademarks Act, which extend to the device marks as a whole. However, when comparing and assessing

similarities between marks, the dominant features of the device marks must be considered. In this case, the word “ARTIZE” emerges as the prominent feature and is entitled to protection. Jaquar’s marks have been in use for a considerable period of time and have gained substantial reputation and goodwill in the relevant market. The distinctiveness of the word “ARTIZE” has been established through extensive use and promotion, making it an important aspect of Jaquar’s brand identity. This distinctiveness extends beyond the specific device marks containing the word “ARTIZE” and encompasses the word itself as a standalone trademark. The fact that Jaquar has obtained registration for the phrase “ARTIZE - BORN from art” as a standalone wordmark strengthens their proprietary rights over the term “ARTIZE”. This registration provides additional evidence that the term “ARTIZE” has acquired distinctiveness and is capable of being protected as a trademark. Given the above factors, it is reasonable to conclude that the dominant feature of Jaquar’s marks is the word “ARTIZE”, and that Jaquar has a legitimate claim to proprietary rights over the term. Any use of a similar mark by another party could be seen as an infringement of Jaquar’s rights, particularly if the use of the mark creates a likelihood of confusion with Jaquar’s mark in the minds of the public. In view of the above, Mr. Datt’s argument to discredit Jaquar’s statutory rights over the word “ARTIZE”, cannot be countenanced.

Is Villeroy using “ARTIS” in trademark sense?

7. Mr. Datt argues that “ARTIS” is only a sub-brand of Villeroy, applied to a particular range of products and is never used on a standalone basis. He claims that it is only found on the packaging and is used to describe the

products as works of art. However, these assertions do not satisfy the Court. The fact that “ARTIS” is always accompanied by the Villeroy house mark is of no consequence. By using “ARTIS”, Villeroy intends it to act as a source identifier for a special segment of washbasins/products so that these products can be distinguished from others in the market. This use is purely in a trademark sense. This fact is further reinforced by Villeroy’s application for registration of the “ARTIS” mark in classes 9 and 11 before the EUIPO, specifically in respect of sanitary ware, which demonstrates that Villeroy has used “ARTIS” in a trademark sense and intends to continue doing so. Villeroy’s application for registration of the “ARTIS” mark as a trademark contradicts their claim that “ARTIS” is only a sub-brand and not used in a trademark sense. By applying for registration of “ARTIS” as a trademark, Villeroy acknowledges the value and distinctiveness of the mark and recognizes its potential to act as a source identifier for their products. Therefore, it is reasonable to conclude that Villeroy does use “ARTIS” in a trademark sense, and their claim to the contrary is not supported by any evidence. Moreover, the mere use of the word “ARTIS”, meaning ‘Art’ in Latin, cannot render its use descriptive, as contended by Mr. Datt. While the term may suggest a certain aesthetic quality or design element in the context of sanitary ware, it cannot be considered descriptive of the goods. Descriptive marks merely describe the nature or quality of the goods, whereas suggestive marks require some imagination or mental connection to understand the association with the goods. In this case, “Artis” is more suggestive than descriptive and requires some level of imagination or mental connection to understand its association with sanitary ware.

8. The scheme of the Trademarks Act makes no exception for sub-brands. If terms such as ARTIS satisfy the criteria for being considered as a ‘trademark’ under Section 2(1)(zb), they are to be afforded full protection under the Act. Villeroy’s aim to distinguish products under the “ARTIS” range from other products is evident from their brochure, website, and social media accounts that display and promote “ARTIS” products on a standalone basis. This further suggests that the mark is being used in a trademark sense to identify and distinguish Villeroy’s products from those of other companies. It is important to note that the test for determining whether a mark is being used in a trademark sense is not whether the user identifies the mark as a brand name or sub-brand, but rather the manner of use of the mark. If the mark is used in a way that identifies the source of the goods, then it is being used in a trademark sense, regardless of whether it is a sub-brand or an individual brand. Therefore, even if Villeroy considers “ARTIS” to be a sub-brand, it does not necessarily mean that the mark is not being used in a trademark sense. The relevant factor is the manner of use of the mark, which appears to be in a way that identifies and distinguishes Villeroy’s products from those of other companies. In *Hem Corporation Pvt. Ltd. (Supra)*, it was held that the Trademarks Act does not conceive the concept of a sub-brand, and giving it such an interpretation would render the provisions of the Act futile as an infringer could create a distinction between the ‘main brand’ and ‘sub-brand’ and continue to erode a registered proprietor’s rights.

9. Now, in order to decide the key question of deceptive similarity, it has to be ascertained whether “ARTIS” so nearly resembles “ARTIZE” as to be

likely to deceive or cause confusion.¹¹ Whether a mark is likely to cause confusion is a question of fact that depends on several factors such as the degree of similarities between the competing marks, nature of goods, channels of trade and the level of consumer attention. In the case at hand, the conflicting marks are nearly identical and there is a high potential for the members of public to associate Villeroy's "ARTIS" with Jaquar. Jaquar has been utilising the "ARTIZE" mark in relation to their products for a considerable period (since 2008) and is thus, the prior user and registrant of the "ARTIZE" marks. Even the pronunciation of the two words "ARTIZE" and "ARTIS" is almost alike. Considering the degree of similarity of the marks and goods with which they are associated, it is likely that Villeroy's use of the mark "ARTIS" could cause confusion amongst the consumers as to the origin of the goods. Such confusion is likely to continue even if the "ARTIS" is used with their house brand as the customers are likely to focus on "ARTIS" range of product and confuse it with Jaquar's "ARTIZE". The prominence of "VILLEROY & BOCH" on the packaging instead of "ARTIS" would not be sufficient to eliminate the likelihood of confusion as the same could be perceived as a deliberate marketing strategy/ collaboration between the two market giants – Villeroy and Jaquar, when none exists. This is precisely what Jaquar seeks to prevent as it could lead to dilution of their mark. In these circumstances, the difference in customer base that both the brands cater to, would have minimal relevance as even an informed customer could be led into believing that parties have entered into an arrangement and Jaquar's "ARTIZE" is affiliated with Villeroy & Boch, as a means to further their business operations in the country. The primary

¹¹ As per Section 2(1)(h) of the Trademarks Act, 1999.

objective of trademark law is to provide for a stable foundation for businesses to build their brands and permitting the use of a deceptively similar mark, even alongside the house brand Villeroy & Boch, would not guarantee stability and cannot act as a shield to the possibility of consumer confusion.

10. Mr. Datt refers to the judgement in *MESO Pvt. Ltd. (Supra)* to submit that use with house mark/ brand is adequate to rebut the likelihood of confusion. However, this judgement must be interpreted in light of its own facts. The issue therein pertained to the use of trademarks “Legend” and “Flirt” for a range of perfumes. As the aforesaid terms were found to be common and general to trade, it was held that in these situations, a discerning consumer would give significance to the brand name. The instant case is distinguishable on facts as the mark “ARTIZE” has not been shown to be common to trade. In fact, similar marks listed by Villeroy in their written statement (at paragraph No. 32) are all employed in respect of various other goods and services, and not sanitary ware.

Jaquar’s rights vis-à-vis Villeroy’s defence of estoppel, delay and acquiescence

11. On estoppel, Mr. Datt refers to the marks cited in the Examination Report dated 11th July, 2011 issued by the Trademarks Registry to Jaquar’s



application for registration of “art that performs” [under application No.: 2003072]. He emphasizes that similar wordmarks “ARTOS” and “ARTIC”

have been granted registration and therefore, the impugned mark is also distinguishable.¹² He also refers to Jaquar’s reply to the said Examination Report dated 11th October, 2011, wherein it has been contended that



“art that performs” mark is visually, phonetically, structurally as well as conceptually different from “ARTOS” and “ARTIC” and in view thereof, Jaquar is estopped from taking a contrary stand before this Court. This contention, however, does not inspire the Court’s confidence. It is now well-settled that the rule of anti-dissection and dominant portion of a mark are not antithetical to one another, rather complement each other. The rule of ‘dominant mark’ is based on the theory that a prudent consumer would not generally recall all the individual details of a device mark but would normally recognise it by the overall impression rendered thereby and thus, in a case for infringement and passing off, the marks have to be weighed against one another to ascertain the similarities.¹³ Considering this judicial principle, the Court does not find that divergence in Jaquar’s stance before the Trademarks Registry and the Court is sufficient to resist this suit for infringement. That apart, merely because Jaquar submitted to the contrary, they cannot be estopped from exercising their statutory rights.¹⁴

12. Next, we turn to Villeroy’s assertion of Jaquar’s delay in instituting the present suit and acquiescence in their use of “ARTIS”. To succeed on

¹² Under application Nos. 201795 and 1207801.

¹³ See: *M/s South India Beverages Pvt. Ltd. v. General Mills Marketing Inc.*, DHC Neutral Citation: 2014:DHC:5276-DB.

¹⁴ *H&M Hennes & Muaritz & Anr. v. HM Megabrand Pvt. Ltd.*, DHC Neutral Citation 2018:DHC:3620.

this count, Villeroy must show a positive act on Jaquar's part in permitting the continuance of "ARTIS" by Villeroy. Mr. Datt contends that "ARTIS" was launched at a mega-event at Frankfurt in 2015, where Jaquar was present. "ARTIS" has been publicised widely since its launch, and the products are sold through common dealers. He also disputes that the cause of action arose in 2021 when Jaquar learnt of "ARTIS" line of products through an article in the Architectural Digest by submitting that the 2020 edition of Architectural Digest also contained an article on Villeroy's "ARTIS", both these editions were available online and thus, were in Jaquar's knowledge, yet, they did not take any action until now. This delay in enforcing their rights amounts to acquiescence, which should bar them from obtaining an injunctive relief. Further, a contradiction in pleadings is highlighted as Jaquar has alleged that Villeroy only had direct customers who imported the "ARTIS" products, but same were in fact being sold openly through common dealers in showrooms.

13. It is well-established in trademark law that the mere absence of legal action by the trademark owner is not enough to establish acquiescence. The trademark owner's conduct or inaction must suggest a conscious decision to allow the other party to use the trademark. In this case, the facts do not indicate that Jaquar encouraged or gave a "green signal" to Villeroy to use "ARTIS" in India. Mere participation in an international exhibition where multiple entities from all over the world were present is not sufficient to attribute knowledge and hold that Jaquar permitted Villeroy to erode their statutory rights. It could, at best, suggest that Jaquar was aware of the global launch of "ARTIS", but this does not demonstrate knowledge of Villeroy's

intention to use “ARTIS” in the Indian market, where Jaquar is the dominant player. Moreover, the cause of action pleaded in the suit must be taken on a demurrer unless it is *ex-facie* contradicted by material presented to the Court, which is not the case here. For the purpose of the present interlocutory injunction, the pleadings and documents available on record do not substantiate Villeroy’s allegation that Jaquar knowingly permitted them to use “ARTIS”. Furthermore, even if Jaquar was aware of Villeroy’s use of the mark, this does not necessarily negate their claim to exclusive use of the “ARTIS” mark in India. Trademark owners are not required to take legal action against every infringer or potential infringer. Jaquar may not have taken legal action against Villeroy’s earlier use of the mark, due to various reasons, such as the presence being insignificant or not causing any harm at the time. However, this does not imply that Jaquar has waived their rights to exclusive use of the mark in the future. Therefore, Jaquar’s earlier inaction is not necessarily a valid defence for Villeroy’s use of the mark, and Jaquar’s claim to exclusive use of the “ARTIS” mark in India remains valid.

14. In view of the foregoing discussion, *prima facie*, it appears that use of the mark “ARTIS” by Villeroy constitutes infringement of Jaquar’s “ARTIZE” mark, in terms of Section 29(1) of the Trademarks Act.

II. WHETHER THE WORD “ARTIZE” IS DESCRIPTIVE OF THE GOODS TO WHICH IT IS APPLIED, THEREBY DISENTITLING JAQUAR FROM RESTRAINING THE USE OF “ARTIS” BY VILLEROY

Where does the mark “ARTIZE” lie on the spectrum of distinctiveness?

15. Mr. Datt laboriously argues that “ARTIZE” is a spin-off of the Latin word “Artis” which means ‘art’ and is therefore descriptive of the goods to which it is applied as it attempts to portray them as works of art. The term is generic, common and lacks distinctiveness as it has a dictionary meaning and there is no evidence of the mark having acquired a secondary meaning. However, Mr. Wadhwa disputes this submission and contends that “ARTIZE” is a coined and arbitrary term, entitled to the highest protection.

16. To determine whether a trademark is generic, the Court must take into account the facts, connection with the goods and services in question, parties’ position in the market and their recognition as the source. The term “ARTIZE” is a unique word that does not find mention in any language and has no meaning. It is unfamiliar to consumers and has been created and adopted by Jaquar to designate a special range of their products. Thus, in the Court’s opinion, “ARTIZE” is an inherently distinctive and fanciful mark, which creates a long-lasting impact on the minds of purchasers of sanitary ware products. Consumers can distinguish Jaquar’s goods from others based on the “ARTIZE” mark, making it capable of functioning as a trademark. Additionally, it is essential to note that “ARTIZE” has been used by Jaquar as a trademark for a considerable time and has been widely advertised and promoted to create a distinct identity in the market. This fact reinforces the mark’s inherent distinctiveness and strengthens Jaquar’s claim to exclusive use of the mark. Therefore, Mr. Datt’s contention that “ARTIZE” is a generic and common word lacking distinctiveness is not sustainable as the term “ARTIZE” is capable of functioning as a trademark.

17. Villeroy's contention that "ARTIZE" has been used in a laudatory sense to describe a creative and premium segment of goods, is far-fetched as it cannot be said that this invented term with no defined meaning, has a reference to the character or quality of goods that would convey to the consumers that Jaquar's products are superior or praiseworthy. The products for which "ARTIZE" is used by Jaquar, namely, bathroom fittings and other sanitary ware, are a crucial consideration in determining the nature of the mark. While each of such article could be an artistic creation with inspired features, shapes or form, it would still require several steps of imagination for an average consumer to perceive the "ARTIZE" mark as meaning a 'work of art'. It must also be borne in mind that while foreign words are commonly used in Indian parlance, 'Artis' is not one such term. Not every consumer in India would be aware of the linguistic origin of the term and absence of widespread use thereof in sanitary ware industry further highlights its distinctiveness and makes it easier for consumers to associate it with Jaquar's products. There is also no basis to hold the mark "ARTIZE" as laudatory or descriptive as it does not have immediate or obvious connection with the character or quality of goods or services to which it is assigned. At worst, the mark could be considered to be suggestive of a luxurious bath brand that is "born from art", which again, does not affect its registrability as suggestive marks are also inherently distinctive. Lastly, once Villeroy has opted to gain trademark protection for "ARTIS" for identical goods in the European Union, they have acknowledged the distinctiveness of the mark, which undermines their argument that the mark is purely descriptive. In view of the afore-discussed, the argument that Jaquar cannot claim monopoly over "ARTIZE", is flawed and cannot be accepted.

18. On the aspect of descriptiveness and commonness of Jaquar's mark, Mr. Datt cited several precedents. While these judgements have undisputedly elucidated the law on the subject, they are distinguishable from the facts of the present case for the reasons set out below:

18.1. The case of *Marico Limited (Supra)* cited by Villeroy to argue that "ARTIS" is a descriptive mark is distinguishable from the present case. In *Marico Limited*, the conflicting marks were "LO-SORB"/ "LOSORB" and "LOW ABSORB". The Division Bench of this Court held that descriptive words and expressions occurring in the English language cannot be claimed to be coined words, even if they are partly-tweaked. However, a situation may arise where a word is invented through the joining of some non-descriptive English words from the dictionary. In the present case, Villeroy contends that the inspiration for "ARTIS" is the term 'art'. However, "ARTIS" is not a common or descriptive term for sanitary ware products, nor has it been shown to be a generic term in the industry. Moreover, Villeroy has claimed trademark rights in respect of "ARTIS", which reinforces its distinctiveness as a trademark. Therefore, the legal position relied upon by Villeroy in *Marico Limited (Supra)* is not applicable to the present case, as "ARTIZE" is a unique and distinctive term that does not fall within the ambit of descriptive or generic words.

18.2. The dispute in *Delhivery Private Limited (Supra)* was between the marks "DELHIVERY" and "DELIVER-E" (label). The Court held that "DELHIVERY" for delivery services is descriptive and phonetically generic term, over which proprietary rights cannot be claimed. The consumers

would be instinctively able to create an association with the services to which the mark is applied and thus, an interim injunction was denied. Here, Jaquar's mark "ARTIZE" cannot be said to be descriptive of the kind, quality, quantity, intended purpose etc. of the goods to which it is associated. It is inherently distinctive and therefore, this judgement is wholly inapplicable to the facts of this case.

18.3. Villeroy has also relied upon the case of *Bling Telecom Pvt. Ltd.* (*Supra*) to argue that "ARTIZE" is a descriptive mark. In *Bling Telecom*, the word "BLING" was used by both parties for mobile phones and accessories, and the Court held that it was a dictionary word that connoted a sense of flashiness and wealth, making it descriptive or attributive of the products' features. However, this judgment is distinguishable. The term "ARTIZE" does not have a meaning which would be evocative of the elements of sanitary ware and bathroom fitting products for which it is used. Moreover, the target customers in the present case are not limited to young adults who may view the products as a status symbol to 'signify a statement by the possessors', as was held in *Bling Telecom (Supra)*.

18.4. In *LT Overseas North America Inc (Supra)*, this Court held that the mark "ROYAL" in relation to rice is suggestive, as it requires consumers to use their imagination to make the connection. The Court upheld the trademark rights vested therein, but at the same time permitted the Defendant to use the mark in a descriptive sense as "ROYAL" was also found to be laudatory. However, this case is distinguishable from the present case, as "ARTIZE" is neither laudatory nor descriptive. Rather, it is a unique and fanciful term invented by Jaquar to designate a special range of their

products, and is therefore inherently distinctive.

18.5. The reliance on judgement in *IHHR Hospitality Pvt. Ltd. (Supra)* is wholly misconceived as the mark therein was “ANANDA”, which means bliss/joy/happiness in the Sanskrit language, was found to be *publici juris* as it has some cultural significance and thus, the Court declined to give any relief.

19. Alluding now to the argument that Jaquar’s mark “ARTIZE” is already heavily diluted as several other companies use phonetically similar registered marks for their products. For this purpose, Villeroy has relied on the marks cited in the Examination Report dated 16th June, 2012 to



trademark application No. 2165292 for the mark “



ARTIZ LITE

include “ARTI” and “”. They have also listed third-party registrations of the “ARTIZE” marks, which were granted subsequent to Jaquar’s registrations. However, the mere existence of such marks on the register is not sufficient evidence to prove that Jaquar’s mark is diluted and has become common to trade. The use of similar names by other entities, cannot deprive Jaquar from pursuing their rights. Moreover, the trademark search report does not prove that such marks are actually being put to use. Villeroy would have to prove their defence of non-infringement with cogent

material and convincing evidence during trial.¹⁵ The *lis* before the Court is the infringement by Villeroy and not the validity of registrations of third-party marks cited by Villeroy. Thus, the existence of other similar marks on the trademark register cannot detract from the fact that Villeroy's use of the mark "ARTIS" is likely to cause confusion and dilution of Jaquar's trademark rights.

III. WHETHER JAQUAR IS ENTITLED TO AN INJUNCTIVE RELIEF AGAINST USE OF "ARTIS" BY VILLEROY

20. Considering Villeroy's global presence and open use of the impugned mark "ARTIS" since 2015, Mr. Datt argues that the balance of convenience is against Jaquar. He contends that allowing concurrent use of the marks until the final disposal of the suit would not cause irreparable damage to Jaquar.

21. The argument put forth by Mr. Datt regarding the balance of convenience is flawed. The fact that Villeroy has been using the impugned mark since 2015 does not make their use lawful or permissible. It must be highlighted that Jaquar adopted the mark "ARTIZE" in 2008 and has been continuously trading thereunder, with statutory protection. As can be seen from the figures mentioned in the plaint, Jaquar has generated appreciable revenue and goodwill in the market from the sales of "ARTIZE" products, which is being diluted by "ARTIS".

¹⁵ *H&M Hennes & Muaritz & Anr. (Supra)* and *Pearl Retail Solutions Pvt. Ltd. v. Pearl Education Society*, DHC Neutral Citation 2013:DHC:1727.

22. In the Court's opinion, balance of convenience lies in favour of Jaquar, who has been openly and uninterruptedly been using "ARTIZE" since 2008 *i.e.*, for about fifteen years. Compared to this, "ARTIS" entered the market much later in 2015, which was objected to by Jaquar, immediately upon knowledge. Thus, the delay in bringing the present suit by Jaquar cannot be a ground to allow Villeroy to continue infringing Jaquar's statutory rights. The harm caused by Villeroy's infringing use of the mark cannot be quantified in monetary terms and is thus irreparable. Allowing Villeroy to continue using the mark would cause confusion in the market and dilute the distinctiveness of Jaquar's mark. Therefore, the balance of convenience is in favour of granting an injunction to Jaquar. As a *prima facie* case for infringement and passing off has been made out, an injunction must follow. The non-grant of interim injunction in the instant case would gravely prejudice Jaquar as well as the general public, who could be misled into purchasing the impugned goods assuming there is an association between Jaquar and Villeroy, where none exists. The fact that the Defendants are using "ARTIS" only with the house brand and plan to continue doing so in the future, as emphasized by Mr. Datt, does not eliminate the possibility of infringement under Section 29(1) of the Trademarks Act and dilution of Jaquar's "ARTIZE" mark, as discussed above.

RELIEF

23. Therefore, in view of the foregoing discussion, during the pendency of the suit, Villeroy and any person acting for or on their behalf are

restrained from directly or indirectly, selling, offering to sell, manufacturing, advertising, promoting or in any other manner using the mark “ARTIS” or any other mark identical or deceptively similar to the Jaquar’s “ARTIZE” trademarks.

24. With the above directions, application is disposed of.

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25. Parties are directed to file the joint schedule of documents within four weeks from today.

26. List before the Joint Register on 10th July, 2023.

SANJEEV NARULA, J

MAY 4, 2023

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(Corrected and released on 10th May, 2023)ⁱ

ⁱ Facts and contentions of the parties were dictated in open Court and the remainder portion was dictated by the undersigned in-Chamber.