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

Date of Decision: 12th September, 2025

+ **CS(COMM) 1161/2024 & I.A. 48983-48984/2024**

WOW MOMO FOODS PRIVATE LIMITED

.....Plaintiff

Through: Mr. Chander M. Lall, Sr. Adv. with Mr.
Ankur Sangal and Mr. Ankit Arvind,
Advs.

versus

WOW BURGER & ANR.

.....Defendants

Through: None.

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

%

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

I.A. 48983/2024 (Application under Order XXXIX Rules 1 and 2 CPC)

1. The present application has been filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 ['CPC'] seeking interim injunction against the Defendants.
2. The underlying suit has been filed by the Plaintiff *inter alia* seeking the relief of permanent injunction against the Defendants from infringing the Plaintiff's trademarks by using the mark 'WOW'/ 'WOW! BURGER', passing off etc.



Case Setup by the Plaintiff

3. Mr. Chander M. Lall, learned Senior Counsel appearing on behalf of the Plaintiff has set up the case of the Plaintiff as under:

3.1. The Plaintiff is a private limited company established in Kolkata. The Plaintiff through its predecessor, coined and adopted the trade mark 'WOW!'/ 'WOW! MOMO' in the year 2008. Since the year 2008 the Plaintiff has been rendering services in food catering, dine-in, delivery, take away format restaurants in more than 30 cities with over 600 outlets, with valuation of Rs. 1225 Crores (in 2021).

3.2. The Plaintiff is stated to have revolutionized the food market with its house mark 'WOW!'. The mark 'WOW!' is stated to form the essential and significant feature of almost all the trademarks of the Plaintiff. It is stated that the consumer associates the mark 'WOW!' and other formative marks with the Plaintiff alone.

3.3. The Plaintiff has expanded its operation in various food segments and

some of them are reproduced hereinafter:



3.4. Due to *continuous* use of the mark 'WOW! BURGER' along with other formative marks of the Plaintiff since 2009, the Plaintiff has garnered substantial



goodwill and reputation and therefore the mark ‘WOW!’ is exclusively associated with the Plaintiff.



3.5. In order to statutorily safeguard its rights over its various ‘WOW!’ formative trademarks, the Plaintiff has obtained trademark registrations which are reproduced herein under:

TRADE MARK	REG. NO.	CLASS	USER DETAILS	DATE OF REG.
WOW MOMO	4665747	29	16-06-2008	21-09-2020
	2014802	30	16-06-2008	27-08-2010
	2014803	43	16-06-2008	27-08-2010
	2831210	30	16-06-2008	22-10-2014
	2831211	35	16-06-2008	22-10-2014
	2831212	43	16-06-2008	22-10-2014
WOW DIMSUMS	3301059	35	16-06-2008	04-07-2016



WOW DIMSUNS	3301060	43	16-06-2008	04-07-2016
WOW DIMSUNS	3301061	30	16-06-2008	04-07-2016
	4665744	29	16-06-2008	21-09-2020
	4665746	32	13/09/2015	21/09/2020
	5291474	35	16-06-2009	19-01-2022
	5291475	43	16-06-2009	19-01-2022
	5412947	32	16/06/2008	18-04-2022
	5412948	43	16/06/2008	18-04-2022
	5321648	30	28-11-2018	09-02-2022
	5412950	43	28-11-2018	18-04-2022
	5412949	32	28/11/2018	18-04-2022
	5510349	29	12-04-2021	29-06-2022



	5510350	30	12-04-2021	29-06-2022
WOW MOMO INSTANT	5510352	29	12-04-2021	29-06-2022
WOW MOMO INSTANT	5510353	30	12-04-2021	29-06-2022
	5667535	9	Proposed to be used	02-11-2022
	5667537	39	Proposed to be used	02-11-2022
	5860011	30	Proposed to be used	23-03-2023

3.6. The Plaintiff has a registered domain name/website www.wowmomo.com, which was registered on 28.07.2013 in its favour.

3.7. The details of the sale turnover of the Plaintiff's products are given at para '18' of the plaint, and for the year 2023-2024 the same is Rs. 453.932 Crores. The amount spent by the Plaintiff on promotion of its brand and trademarks is given at para '21' of the plaint and for the year 2023-2024 the same is Rs. 10.37 Crores.

3.8. The Plaintiff also has substantial social media presence on (i) Facebook with 657,000+ likes and 656,000+ followers; (ii) Instagram with around 94,700+ followers; and (iii) LinkedIn with 42,000+ followers.

3.9. The Plaintiff has been vigilant about its trademarks and has obtained various orders from this Court protecting its trademarks, the details of the same is given at para '28' of the plaint.



3.10. In December, 2024 the Plaintiff got to know of the intended launch of the Defendant No.1's business activities in India under the impugned mark 'WOW

BURGER' / '  ' / '  ', in collaboration with Defendant No. 2, by the LinkedIn post of the Defendant No.2.

3.11. He stated that the Defendants have slavishly copied the dominant/essential feature 'WOW!' for identical goods and services. He stated that 'WOW!' is the essential feature of the trademark of the Plaintiff which has been copied by the Defendants and therefore on this ground alone the injunction must be granted in favour of the Plaintiff. In this regard, he relied upon the judgment of this Court in **M/s Amar Singh Chawal Wala v. M/s Shree Vardhman Rice and Genl. Mills¹**.

3.12. He stated that the trademark of the Plaintiff has to be compared with the impugned mark of the Defendants as a whole² and thereafter the said comparison would show that both the marks are exactly similar.

3.13. He stated that the mark 'WOW!' is arbitrary and is not associated with the food/restaurant industry. He stated that the said mark is not descriptive or generic for the food products or services and therefore, the said mark is at best distinctive and/or suggestive.³

3.14. He stated that due to *continuous* and extensive use since 2008, the Plaintiff's trademarks including 'WOW!' series of marks have acquired secondary meaning due to immense goodwill and reputation of the Plaintiff.

¹ 2009 SCC OnLine Del 1690.

² Amritdhara Pharmacy v. Satya Deo Gupta, AIR 1963 SC 449, at Paragraphs 6 to 8.

³ Bata India Limited v. Chawla Boot House & Anr., 2019 SCC OnLine Del 8147, at Paragraphs 27 to 32.



3.15. He stated that it is a settled principle of law⁴ that the disclaimer on some trademarks does not disentitle the Plaintiff from enforcing its right in part, of the trademark, against the third-party.

3.16. He stated that the stand taken by the Plaintiff in respect of third-party's trade mark in response to the objections of the Registrar of Trademarks cannot be held as an estoppel⁵ against the Plaintiff in the present proceedings, because it relates to a different party/mark.

3.17. He stated that considering that the goods and services of both the parties in question relate to the food industry grant of injunction becomes necessary.

3.18. He stated that in these facts the Plaintiff has established a *prima facie* case in its favour, the balance of convenience also lies in favour of the Plaintiff and against the Defendants and irreparable injury will be caused in case an order of injunction is not granted.

3.19. The learned counsel for the Plaintiff has filed written submissions dated 28.07.2025.

Analysis and Findings

4. This Court has heard the learned Senior Counsel for the Plaintiff and perused the record.

5. The captioned application was listed before this Court on 19.12.2024, wherein the predecessor Bench of this Court issued notice to the Defendants. Since none appeared on behalf of the Defendant No.1 after service of summons and notice, the right of the Defendant No.1 to file written statement was closed *vide* order dated 09.07.2025.

⁴ Sona Mahindra Pvt. Ltd. v. Sona BLW Precision Forgings Ltd. and Ors., 2023 SCC OnLine Del 2184 at Paragraphs 39, 40, 55 and 56 and Cadbury India Ltd. & Ors. v. Neeraj Food Products, ILR (2007) II Delhi 1065 at Paragraphs 68 and 79.

⁵ Telecare Network India Pvt. Ltd. v. Asus Technology Pvt. Ltd., 2019 SCC OnLine Del 8739, at Paragraphs 41 and 42.




6. The Defendant No.2 has also been served as recorded by this Court in the order dated 25.07.2025, but none has appeared on behalf of the Defendant No.2 throughout.

7. The captioned application was finally heard on 30.07.2025 and the judgment was reserved and none appeared on behalf of the Defendants on the said date as well.

8. The Plaintiff has filed the captioned application seeking the following relief:

“a. An order of interim injunction restraining the Defendants, their proprietors, partners or directors, as the case may be, its principal officers, servants, distributors, licensees, dealers and agents, and all others acting for and on behalf of the Defendants from selling, offering for sale, advertising, directly or indirectly dealing in any goods and services under

the impugned trade mark “WOW”/ “WOW BURGER”/  /



or any other mark as may be identical to or deceptively similar with the Plaintiff's Trade Marks “WOW! BURGER”/ “WOW! MOMO” and other “WOW” formative trademarks, so as to cause infringement of the Plaintiff's registered trademarks as well as passing off”

No Trademark Registration for ‘WOW’/‘WOW BURGER’ in Favour of the Plaintiff

9. The Plaintiff in the fact of the present case claims that in the year 2008 the predecessor of the Plaintiff coined the mark ‘WOW!’ and ‘WOW! MOMO’ in Calcutta and subsequently got registrations with user claim of 2008. It is pertinent to note that all the registration certificates which have been placed on record by the Plaintiff only shows the registration in the composite marks i.e., ‘WOW! MOMO’, ‘WOW! DIMSUM’, ‘WOW! THUNDERZZ’, ‘WOW! CHICKEN’, ‘WOW! ACTIVE’, ‘WOW! CHINA’, ‘WOW! CHINESE’, ‘WOW! MOMO INSTANT’, ‘WOW! EATS’ and ‘WOW! CHIPS’.



9.1. At the outset it is pertinent to note that no registration details have been placed on record which would show that the Plaintiff has trademark registration for the mark 'WOW!' or 'WOW! BURGER'.

9.2. It is further pertinent to note that some of the registration certificates which are placed before this Court records that the Plaintiff cannot use any individual word of the composite marks in a standalone manner and claim exclusivity thereof.

9.3. The trademark registrations therefore, show that the initial trademark adopted by the Plaintiff was 'WOW MOMO' and subsequently other formative marks. No registration for the mark 'WOW' was ever applied by the Plaintiff as per the record. Therefore, the assertion of the Plaintiff that the mark 'WOW' was also adopted by the predecessor of the Plaintiff in the year 2008, is not borne out from the record.

9.4. The record relied upon by the Plaintiff is also wholly deficient on the use of mark 'WOW BURGER' as a trademark/brand and this aspect has been dealt in detail in subsequent part of the judgment.

Whether 'WOW' is the Distinctive/Dominant mark of the Plaintiff

10. The Plaintiff contends that 'WOW' constitutes the essential, dominant and distinctive feature of its trademarks. It is however, important to note that 'WOW' is a dictionary word of common use, employed as an exclamatory remark in the English language. Such expression which are part of ordinary parlance, have consistently been held by the Courts to fall in the category of non-distinctive and or descriptive marks, incapable of exclusive use by one single individual/entity. In this regard it would be pertinent to refer to the decision of the Supreme Court and certain decisions of this Court as well as Court of other jurisdictions which have dealt with similar subject matter:



(i) Recently, the Supreme Court in **Pernod Ricard India (P) Ltd. v. Karanveer Singh Chhabra**⁶ while expounding the law on Section 17(2) of the Act of 1999 reiterated that that generic, descriptive or laudatory terms especially those commonly used in a given trade cannot be monopolized by any one proprietor, even where such terms form part of a registered mark. The relevant paragraphs read as under: -

“34. It is a well-established principle of trademark law that **generic, descriptive, or laudatory terms** - particularly those commonly used in a given trade - **cannot be monopolized by any one proprietor**. Even where such terms form part of a registered trademark, protection does not extend to those elements per se unless it is affirmatively shown that they have acquired secondary meaning - i.e., that the term has come to be exclusively and distinctively associated with the plaintiff's goods in the perception of the consuming public.

...

50. The appellants' attempt to combine elements from two distinct marks - ‘BLENDERS PRIDE’ and ‘IMPERIAL BLUE’ - to challenge the respondent's mark ‘LONDON PRIDE’, constitutes a hybrid and untenable pleading. **Each mark must be assessed independently, and cherry-picking generic or unregistered features from multiple marks to fabricate a composite case of infringement is not legally sustainable.**

51. **It is not in dispute that the word “PRIDE” is not registered as a standalone mark.** Nor can the appellants claim exclusivity over common elements like bottle shape or color schemes that are generic and widely used in the industry. **While the composite marks ‘BLENDERS PRIDE’ and ‘IMPERIAL BLUE’ are protected, their individual elements - lacking distinctiveness - are not independently enforceable.**

52. The piece-meal approach adopted by the appellants - seeking to combine unrelated features from their own marks - has undermined their claim. **Apart from the shared use of a common term, there is no meaningful similarity between the marks.** Key elements such as packaging, typography, bottle design, and label layout are materially

⁶ 2025 SCC OnLine SC 1701



distinct. In a market segment, where consumers are more discerning, the likelihood of confusion is negligible.”

(Emphasis supplied)

(ii) A learned Single Judge of this Court in **Institute of Directors v. Worlddevcorp Technology and Business Solutions Pvt. Ltd.**⁷ held that ordinary English words such as ‘Institute’ or ‘Directors’ cannot be monopolized by one trader, since they remain in the public domain for everyone to use. The relevant extract of the said judgment reads as under:

“28. It is well settled that **words of ordinary English usage cannot be monopolized.** Else, the entire English language would be appropriated by a few, which can obviously not be permitted. There is, therefore, in Section 9(1)(a), an absolute proscription to registration of marks which are inherently lacking in distinctiveness, in that they are incapable of distinguishing the goods or services of one person from those of another. Words of common English usage fall within this category. It is only if the mark has attained secondary significance, by dint of continuous usage and is entitled, therefore, to the benefit of proviso to Section 9(1), that such a mark can be registered. **Otherwise, words of common English usage, even when put together to form a phrase of common English usage, cannot be registered. No monopoly can be claimed by the registrant of such a mark.**”

(Emphasis supplied)

(iii) Recently a Co-ordinate bench of this Court in **Yatra Online Limited v. Mach Conferences and Events Limited**⁸ was dealing with a similar issue of a *quia timet action*, wherein the plaintiff was claiming exclusivity over the word ‘YATRA’ in relation to the travel business. The learned Single Judge while declining injunction observed as under:

52. It is a settled law that the generic and commonly descriptive marks, which describe the nature of the business or the services cannot be exclusive to the proprietor of the registered trade mark. Section 30 of the Act provides for limits on the effect of the registered

⁷ CS (COMM) 611/2023 dated 11.12.2023.

⁸ CS(COMM) 1099/2024 dated 22.08.2025.



trade mark when the use of the mark in relation to goods or services indicates the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or rendering of services or other characteristics of goods or services.

53. ... Although, it can be said that Mark 'YATRA' is dominant and essential part of the registered Device Mark of the Plaintiff, **the Plaintiff cannot claim monopoly on the Mark 'YATRA' as the same is generic, commonly descriptive for the service of travel and tourism. When the Plaintiff has adopted words in common use for its own Trade Name/Corporate Name, it runs the risk of the same Mark being used by others. The generic or commonly descriptive word can never become trade marks on their own as they never acquire distinctiveness or a secondary meaning. These words do not indicate origin or source. It is settled law that words used in everyday language cannot be allowed to be monopolized.**

(Emphasis supplied)

(iv) In the case of **Marico Limited v. Agro Tech Food Limited**⁹ a Division Bench of this Court went a step ahead from the general norm and held that even tweaking of a common English descriptive word does not merit trademark protection, and courts should take a stringent view of such claims. The subject matter of the said judgment was the trademark 'LOSORB', which the Plaintiff therein had coined from the expression 'LOW ABSORB'. The relevant paragraph of the said judgment reads as under:

“On this aspect one immediately feels that it is an aspect of concern with respect to the claim of the plaintiff that if partly tweaked descriptive words and expressions of English language are claimed to be coined words, the same would result in a grave and absurd situation because a non-tweaked word being a completely descriptive word will in fact be deceptively similar to the tweaked descriptive English language word or expression of which registration is obtained. Meaning thereby that because of success in getting registered a minor modification of a descriptive word or expression of the English language, a person who gets registration can prevent a purely descriptive use of a normal word or expression

⁹ FAO(OS) No. 352/2010 dated 01.11.2010.



as found in English language dictionary on the ground that it would be identical with or deceptively similar to a registered trademark- a position which is found in the present case. **Such a position, in our opinion, cannot at all be countenanced and must be struck down with a heavy hand.**

(Emphasis supplied)

(v) The Privy Council in the case of **Standard Ideal Co. v. Standard Sanitary Manufacturing Company**¹⁰ has held that a common English word that only describes the nature or quality of the goods and nothing else cannot effectively distinguish one trader's goods from another's. In this case, the trademark in question was 'STANDARD' in connection with sanitaryware. The relevant extract of the said judgment reads as under:

"Now the word "standard" is a common English word. It seems to be used not unfrequently by manufacturers and merchants in connection with the goods they put upon the market. So used it has no very precise or definite meaning. **But obviously it is intended to convey the notion that the goods in connection with which it is used are of high class or superior quality or acknowledged merit.** Without attempting to define "the essentials necessary to constitute a trade mark properly speaking" it seems to their Lordships perfectly clear that a **common English word having reference to the character and quality of the goods in connection with which it is used and having no reference to anything else cannot be an apt or appropriate instrument for distinguishing the goods of one trader from those of another. Distinctiveness is the very essence of a trade mark.** The plaintiff company was therefore **not entitled** to register the word "standard" as a trade mark. The result is, in accordance with the decision of the Supreme Court in Partlo v. Todd (1), that the word though registered is not a valid trade mark. **The action so far as it is based on alleged infringement of trade mark must fail.**"

(Emphasis supplied)

10.1. It would also be relevant to refer to the dictionary meaning of 'WOW' in Shorter Oxford English Dictionary 6th edition, at page '3672', which reads as under:

¹⁰ 1910 (27) RPC 789.



woven verb *pa. pple*: see **WEAVE** verb¹.

WOW abbreviation.

Waiting on weather.

wow /wau/ noun¹. L18.

[ORIGIN Imit.]

1 A bark or similar sound. L18. ▶ **b** = **WAUL** noun. E19.

2 Fluctuations in pitch in reproduced sound that are sufficiently slow to be heard as such in long notes; a property in a reproducer that gives rise to this, *esp.* uneven speed. Cf. **FLUTTER** noun 1d. M20.

wow /wau/ noun² & adjective. slang (orig. US). E20.

[ORIGIN from the interjection.]

▶ **A** noun. A sensational success. E20.

P. G. WODEHOUSE 'A friend . . . tipped me off that this company was a wow' 'A what?' 'A winner.'

▶ **B** adjective. Exciting or expressing admiration and delight. E20.

→ **wow factor** a quality, property, or element that impresses, excites, or delights.

wow /wau/ verb¹ intrans. E19.

[ORIGIN Imit.: cf. **wow** noun¹, **WOWSER**.]

= **WAUL** verb.

wow /wau/ verb² trans. slang (orig. US). E20.

[ORIGIN from **wow** noun², interjection.]

Impress or excite (*esp.* an audience) greatly; make enthusiastic.

Sunday Express Yet another new look . . . wowed London last week.

wow /wau/ interjection. E16.

[ORIGIN Natural exclam. Cf. **vow** interjection, **ZOWIE**.]

Expr. astonishment, admiration, or (Scot.) aversion, sorrow, or emphasis. Cf. **yow** interjection 3.

■ **wowie**, **-ie** interjection expr. astonishment or admiration E20.

10.2. The dictionary meaning shows that when this word 'WOW' is used as an adjective, it signifies the 'quality' of the product or service for which it is used. Under Section 9(1)(b) of the Act, 1999, a word which merely convey praise or describe the quality or characteristic of goods or services, are not entitled to protection as trademarks (monopoly). Moreover, Section 30(2)(a) of the Act of 1999 specifically provides that even if such a word is registered, third parties are entitled to use it honestly and descriptively to indicate the nature, quality, or other characteristics of their goods or services. Therefore, in the opinion of this Court, the Plaintiff cannot assert exclusive rights over the expression "WOW", as it falls squarely within statutory exceptions to trademark protection and hence, it cannot be treated as distinctive/dominant mark of the Plaintiff.



10.3. Placing reliance on the aforesaid settled law and the common meaning of the word ‘WOW’, it is concluded that ‘WOW’ is a laudatory exclamation in the food/hospitality business, universally used to convey delight over ‘quality’ of the food. The Plaintiff cannot convert that everyday exclamation into its private preserve/property.

Admission of the Plaintiff qua non-distinctiveness of WOW

10.4. The other crucial aspect which requires attention of this Court and is worth noting is that Registrar of Trade Marks while granting registration to Plaintiff’s device marks¹¹ i.e., ‘WOW! MOMO’ (Device/Class 30), ‘WOW! MOMO’ (Device/Class 43), ‘WOW! THUNDERZZ’ (Device/Class 32), ‘WOW! CHINA’ (Device/Class 30), ‘WOW! CHINESE’, (Device/Class 32), has given a disclaimer against the exclusive use of the words forming part of the composite marks of the Plaintiff. In the opinion of this Court, these disclaimers were appropriate as the words in question individually are common English words in the trade of hospitality industry and therefore, cannot be appropriate by a single trader.

10.5. A perusal of the record and especially the documents qua TM Application No. 5321648 for ‘WOW CHINA’ and 5412950 for ‘WOW! CHINESE’, shows that the Registrar of Trade Marks raised certain objections qua these trademark applications on the basis of objections received from third parties. The word WOW was also objected to.

In reply(s) to the said objections, the categorical stand taken by the Plaintiff was that the mark of the Plaintiff is formed by combination of an English Dictionary words ‘WOW’ and ‘CHINA/CHINESE’. It is further stated in the said

¹¹ TM Application Nos. 2014802, 2014803, 4665746, 5321648, 5412949.



replies that the said composite mark when considered as a whole makes it distinctive of the Plaintiff's goods and services.

10.6. The relevant part of the replies of the Plaintiff dated 27.03.2022 and 20.07.2022 to the objections of the Registrar of Trade Marks as mentioned above reads as under:

27.03.2022:

"The objection raised under Section 9(1)(a) is not maintainable as the applicants submit that **their mark is formed by a combination of an English dictionary word WOW** suffixed with CHINA, followed by a tagline DESI CHINESE."

20.07.2022:

"The Applicant submits that the objection raised under Section 9(1)(a) is not maintainable as the applicants submit that **their mark is formed by a combination of an English dictionary word WOW** suffixed with CHINESE."

(Emphasis supplied)

Thus, the Plaintiff on its own showing admitted before the Registrar of Trade Marks that the word 'WOW' alone being an English Dictionary word is not distinctive and it is in a combination with another word that it would as a composite mark have a distinctive character. In view of this stand, Plaintiff cannot contend in these proceedings that the word WOW on a standalone basis is a distinctive mark.

10.7. The binding effect of admissions made before the Registrar of Trademarks, at this prima facie interim stage was dealt by this Court in **Institute of Directors** (supra). The relevant paragraph reads as under:

"18. This Court is presently examining the matter at a prima facie interlocutory stage, under Order XXXIX Rules 1 and 2 of the CPC. Any admission made by either party, which is destructive of the case that it seeks to canvass has, therefore, to be taken into consideration by the Court while passing orders under Order XXXIX Rules 1 and 2. It would be open to the party, during trial, to seek to escape the said



admission. **However, at a prima facie stage, the admission would operate against the party making it.**

19. I see no real escape for the plaintiff, from the representation made by it before the Trademarks Registry in its reply dated 8 December 2014 to the FER raised by the Registry, extracted in para 9 supra. It is specifically stated, by the plaintiff, in the said paragraph, that “words used in the mark are common English language words and are descriptive in nature and cannot belong to any one proprietor”. In one breath, the plaintiff, thereby, admits the textual component of its device mark both to be descriptive as well as to be lacking in distinctive character, by stating that the textual component of the mark constituted of common English words which could not belong to any one proprietor.”

(Emphasis supplied)

10.8. So also, in this regard a Co-ordinate bench of this Court, in **Yatra** (supra) observed that disclaimers are placed so that the proprietor of the registered mark does not try to expand the right beyond their legitimate bounds or claim special advantages in the disclaimed portions. The relevant portion reads as under:

“57. The disclaimers are placed so that the proprietor of the registered mark does not try to expand the right beyond their legitimate bounds or claim special advantages in the disclaimed portions.”

(Emphasis supplied)

10.9. In view of the admissions of the Plaintiff before the Registrar of Trademark to the above effect, the Plaintiff cannot be allowed to approbate and reprobate and claim ‘WOW’ as its distinctive/dominant mark. Thus, in light of the said facts as well, the Plaintiff will not be entitled to claim exclusivity over the word ‘WOW’ stating that the same is distinctive feature of its trademark.

Whether ‘WOW’ has acquired Secondary Meaning

11. The next question which arises for consideration is whether the mark ‘WOW’ even though a common English dictionary word can be afforded protection on the plea that it had acquired secondary meaning due to continuous use since 2008 by the Plaintiff.



11.1. The Plaintiff contends that ‘WOW’ trademarks have acquired substantial goodwill and reputation taking the net worth of the Plaintiff company to Rs. 2500 Crores. The sales turn over and expenditure on brand promotion for the year 2023-2024 alone was Rs. 453 Crores and Rs. 10 Crores respectively. The Plaintiff contends that in light of these facts it can be concluded that the ‘WOW’ mark has acquired a secondary meaning.

11.2. For evaluating the aforesaid contention of the Plaintiff, this Court finds it apposite to resort to the guiding principles which are enunciated by the Supreme Court and this Court in various cases, some of which are referred under:

(i) The Supreme Court in its recent pronouncement **Pernod Ricard India (P) Ltd. (supra)**, while expounding the law on Section 17(2) of the Act of 1999 reiterated that in disputes involving composite marks, the mere presence of a generic word in both marks would not justify a finding of deceptive similarity. It held that if the marks, viewed in totality conveyed distinct identities, the use of a common element which is descriptive or laudatory, will not by itself amount to infringement has held as under: -

“32. A foundational principle in trademark law is that marks must be compared as a whole, and not by dissecting them into individual components. This is known as the anti-dissection rule, which reflects the real-world manner in which consumers perceive trademarks - based on their overall impression, encompassing appearance, sound, structure, and commercial impression. In *Kaviraj Pandit Durga Dutt Sharma v. Navratna Pharmaceuticals Laboratories* (supra), this Court underscored that the correct test for trademark infringement is whether, when considered in its entirety, the defendant's mark is deceptively similar to the plaintiff's registered mark. **The Court expressly cautioned against isolating individual parts of a composite mark, as such an approach disregard how consumers actually experience and recall trademarks.**

...

32.3. Consequently, in disputes involving composite marks, the mere presence of a shared or generic word in both marks does not, by itself, justify a finding of deceptive similarity. Courts must undertake a holistic



comparison examining visual, phonetic, structural, and conceptual elements, to assess whether the overall impression created by the rival marks is likely to mislead an average consumer of ordinary intelligence and imperfect memory. If the marks, viewed in totality, convey distinct identities, the use of a common element - particularly if it is descriptive or laudatory - will not by itself amount to infringement.

...

43. Section 17(1) of the Trade Marks Act, 1999 grants exclusive rights only in respect of the mark as registered. Section 17(2) excludes protection for common or non-distinctive elements unless such elements have acquired secondary meaning. Sections 27(2) and 29 preserve the right to institute passing off actions and define the contours of infringement, respectively. Notably, Section 29(3) presumes confusion only where identical marks are used for identical goods - a condition not met in the present case as the marks.

44. Applying the settled legal standards - including the anti-dissection rule, the overall similarity test, and the perspective of an average consumer - we prima facie find no deceptive similarity between the competing marks that would give rise to confusion.

45. In the present case, the marks - 'BLENDERS PRIDE' and 'LONDON PRIDE' - are clearly not identical. Though the products are similar, the branding, packaging, and trade dress of each are materially distinct. The Commercial Court and High Court have rightly held that the term 'PRIDE' is publici juris, and commonly used in the liquor industry. The dominant components - 'BLENDERS', 'IMPERIAL BLUE', and 'LONDON' - are entirely different both visually and phonetically, producing distinct overall impressions."

(Emphasis supplied)

(ii) A Co-ordinate bench of this Court in the case of **PhonePe Pvt. Ltd. v. EZY Services & Anr.**¹² while relying on the ratio as held in the case of **Marico** (supra) held that the acquisition of secondary meaning by a mark is not to be readily assumed and the acquisition of secondary meaning would only be justified where the concerned common mark has been used for considerably long period. The learned Single judge also observed that decision on distinctiveness

¹² IA 8084/2019 in CS(COMM) 292/2019 dated 15.04.2021.



could be made only after evidence was led by the parties. The relevant extract of the said judgment reads as under:

“47. Having expressed this opinion, the Division Bench adverted to the proviso to Section 9, which relates to the absolute bar against registration of descriptive marks, where the marks had acquired distinctiveness. In this context, the Division Bench opined that “it is only when cancellation proceedings achieve finality of the same being finally dismissed can it be said that a mark for which ordinarily there is an absolute ground for refusal of registration that it has acquired a distinctive character i.e. a secondary meaning or is a well-known trademark”. The Division Bench went on (in para 14 of the report et seq.) to address the issue of “whether in spite of the trademark of the appellant ‘LOW ABSORB’ being the descriptive trademark, ... the appellant (had) established its case at this interlocutory stage of its trademark becoming so distinctive that it can claim exclusive right and monopoly in the same by virtue of the proviso to Section 9. This, observed the Division Bench, led to the issue of “the meaning to be ascribed to the expression ‘distinctive’ as found in the proviso to Section 9”. The second issue, observed the Division Bench, was whether the trademark of Marico had, in fact, become “distinctive”. Paras 15 and 17 of the report went on to classically explain the concept of “distinctiveness” and acquisition of secondary meaning, as creating an exception to the concept of non-exclusivity of descriptive marks, thus:

“The word ‘distinctive’ is not directly defined in the Act. However, meaning of distinctive is indicated in the definitions of ‘trade mark’ [Section 2(zb)] and ‘well known trade mark’ [Section 2(zg)]. The word has been explained in a plethora of judgments. **Distinctive has been explained to mean such use of the trade mark with respect to the goods of a person that the public will immediately and unmistakably co-relate the mark with the source or a particular manufacturer/owner thereof.** The real issue which however arises is what should be the meaning of the expression ‘distinctiveness’ in the situation when the trade mark is a word mark of descriptive nature. When a trade mark, which is a word mark, is arbitrarily adapted and is such having no co-relation to the goods in question, then in such a case distinctiveness is achieved by normal and ordinary use of the trade mark with respect to the goods and it has been repeatedly held that such trade mark is entitled to the highest degree of protection. However this is not and cannot/should not be so for a trade mark which is a descriptive word mark. Some colour has to be taken for the



word 'distinctive' as found in the proviso to Section 9 from the expression 'well known trade mark' which follows the distinctiveness aspect as found in the said proviso. **Courts should ordinarily lean against holding distinctiveness of a descriptive trade mark unless the user of such trade mark is over such a long period of time of many many years that even a descriptive word mark is unmistakably and only and only relatable to one and only source i.e. the same has acquired a secondary meaning.** A case in point is the use of 'Glucon-D' for 60 years in the recent judgment in the case of Heinz Italia v. Dabur India Ltd., (2007) 6 SCC 1. **A period of 60 years is indeed a long period of time and thus distinctiveness of the descriptive word mark used as a trade mark was accepted, albeit in a tweaked form of the normal descriptive word 'Glucose'.** Therefore, when the descriptive trade mark is used only by one person undisturbed for a very long period of time, without anyone else attempting to use the trade mark during this long period time, a case can be established of a descriptive word having achieved distinctiveness and a secondary meaning.

17. Ultimately everything will turn on the facts of each individual case and in some cases the facts may be wholly clear even at the interim stage of deciding an interlocutory application, in other cases (which are bound to be in a majority) a decision on distinctiveness can only be made after evidence is led by the parties. This is also so held by the Supreme Court in the 'Super Cup' case **Godfrey Philips India Ltd. v. Ginnar Food & Beverages (P) Ltd.**, (2004) 5 SCC 257 that distinctiveness is an issue to be established or examined in the facts of each particular case i.e. the evidence has to be evaluated in the facts of each individual case."

48. In my respectful opinion, the afore extracted passage posits the exact legal position, regarding availability of a plea of infringement even in respect of descriptive marks, where the mark has acquired distinctiveness and a secondary meaning. **It is important to note that acquisition of a secondary meaning is not to be readily assumed.** The Division Bench clearly held that, ordinarily, Courts should lean against holding that the descriptive trademark has become distinctive or has acquired a secondary meaning, and that such a conclusion would be justified only where the trademark has been used for such a long period of time "of many many years" that "the mark is unmistakably and only and only relatable to one



and only source”. The word “only”, be it noted, has been used not once, but thrice. The Division Bench went on to make its meaning further clear by observing that, in the majority of cases, a decision on distinctiveness could be made only after evidence was led by the parties. With profound respect, I entirely agree with this enunciation of the law.”

(Emphasis supplied)

(iii) Another Co-ordinate bench in the case of **Yatra** (supra) on the similar lines held as under:

“54. The word ‘YATRA’ **cannot** be said to have acquired a secondary meaning. **For acquiring a secondary meaning, the primary meaning of the said expression has to be lost and left behind.** The claim of a secondary meaning has to satisfy that although the primary meaning of the expression with which it began, no longer means what it used to prior to the adoption by the Plaintiff. Hence, to hold that ‘YATRA’ has acquired a secondary meaning, the Plaintiff has to demonstrate uninterrupted use for considerable length **without any competitor attempting to use the said Mark.** For ‘YATRA’ to acquire a secondary meaning and to be associated exclusively with the Plaintiff, it has to be explained the primary meaning of the word ‘YATRA’, which has said to have been lost.”

(Emphasis supplied)

11.3. Applying the aforesaid law to the facts of the present case, in the considered opinion of this Court prima facie it cannot be said that the common law English word ‘WOW’ has acquired any secondary meaning so as to relate it only to the products and services of the Plaintiff, in the mind of the consumer. The Plaintiff has been in use only since 2008 and the same cannot be treated as ‘long period of time’ as observed in **PhonePe** (supra) and **Marico** (supra). The volume of turnover of Rs. 453 Cr. for the FY 2023-24 is also not a figure which would persuade the Court to hold this mark acquired a secondary meaning.

11.4. It is also pertinent to note that there are other businesses in the market which are using the word ‘WOW’ as part of their trade mark for their product



and services and couple of such instance¹³ has been placed on record by the Plaintiff itself as part of the compilation dated 30.01.2025. Moreover, a random google search would reveal that there are various other businesses enlisted which are using the word 'WOW' in the food industry itself. Therefore, in the considered opinion of this Court at this prima facie interim stage it cannot be said that the mark 'WOW' has acquired any secondary meaning in relation to the Plaintiff.

'WOW! BURGER' is not the trademark of the Plaintiff

12. A perusal of the plaint shows that the Plaintiff has clandestinely mentioned all over the plaint that it has a trademark i.e., 'WOW! BURGER' and that the Plaintiff has been using the said trademark *continuously* since 2009¹⁴. Some of the relevant paragraphs capturing the said stand of the Plaintiff is reproduced as under:

"3. That the Plaintiff is filing the present suit against the Defendants as it has come to know that the Defendants are about to launch identical business as that of the Plaintiff under the infringing trade mark "WOW BURGER". Accordingly, the suit has been filed to restrain the Defendants from using the trade mark "WOW BURGER" or any other trade mark(s) which are identical / deceptively similar to the **Plaintiff's trade mark i.e., "WOW! BURGER"** / "WOW! MOMO"/ "WOW!" and other "WOW!" formative trade marks ("Plaintiff's Trade Marks").

.....

7. That the Plaintiff has created a revolution in the food market, with its house mark "WOW!". The trade mark "WOW!" forms the essential and significant feature of almost all the trademarks of the Plaintiff. **The consumers associate the trade mark "WOW!"/ "WOW! MOMO" / "WOW! BURGER"** and other "WOW!" formative trademarks with the Plaintiff alone. Due to the widescale reach and positive acceptance of the brand, the Plaintiff Company has garnered a net worth of approximately INR 2500 Crores.

.....

¹³ WOW Skin Care products.

¹⁴ Paragraph Nos. 3, 7, 10, 11, 15, 17, 19, 20, 21, 22, 24, 26, 27, 36, 41 and 47.



10. That the Plaintiff while expanding its business and range of products under the “WOW!” series of trade marks, **adopted the trademark “WOW! BURGER” in the year 2009 for selling burgers in its restaurants/ outlets and has been continuously using the same ever since its adoption.**

.....

11. That **due to its continuous use of the trade mark “WOW! BURGER”** since the year 2009, the Plaintiff has been able to garner substantial goodwill and reputation for its business under the Plaintiff’s Trade Marks and other “WOW!” formative trademarks and the said trademarks are accordingly exclusively associated with the Plaintiff.”

(Emphasis supplied)

13. This Court has perused the documents annexed with the plaint, which goes on to show that *firstly*, the Plaintiff has got no registration in any Class whatsoever, for the mark ‘WOW! BURGER’, *secondly* as per the documents placed on record the last use of the mark ‘WOW! BURGER’ by the Plaintiff was in the year December, 2018 and that too the mark ‘WOW! BURGER’ was last used as a ‘menu item’ and not as a house mark/trademark/brand. *Thirdly*, the invoices which have been placed on record to show use of the mark ‘WOW! BURGER’ clearly establishes that the Plaintiff was using the mark ‘WOW! BURGER’ only as an invoiced menu item and after 2018 there is not even a single invoice which would show that ‘WOW! BURGER’ is even being used by the Plaintiff as menu item, currently.

13.1. The current Menu¹⁵ of the Plaintiff which was perused by this Court using the google search and search over online food ordering apps (Zomato and Swiggy) as mentioned in the plaint and documents annexed therewith, nowhere shows that ‘WOW! BURGER’ even exists as a menu item as on date. Instead, this Court found that the Plaintiff has been using the name ‘**Moburg**’ for its Burger items. The Menu as perused by this Court is reproduced as under:

¹⁵ As on 09.09.2025.



steamed momos



₹130/- extra* for Meal

	Momo	Meal
New Veg Momo Mania	₹69	₹199
New Veg Delight Momo	₹99	₹229
Veg Darjeeling Momo.....	₹165	₹295
Paneer Momo	₹219	₹349
Corn Cheese Momo.....	₹229	₹359
New Chicken Momo Mania	₹69	₹199
New Chicken Delight Momo	₹99	₹229
Chicken Darjeeling Momo.....	₹175	₹305
Chicken Masala Momo.....	₹229	₹359
Chicken Cheese Momo.....	₹249	₹379

fried momos



₹35/- extra* for Meal

₹60/- extra* for Meal

thukpa

	Meal
Veggie Thukpa	₹229 ₹405
Chicken Thukpa	₹239 ₹423

baked momo au gratin

Baked Momo Au gratin Veggie	₹329
Baked Momo Au gratin Chicken	₹349

sizzler momo

	Rice/Noodles
Veg Sizzler Momo	₹389
Paneer Sizzler Momo.....	₹399
Corn Cheese Sizzler Momo.....	₹409
Chicken Sizzler Momo.....	₹409
Chicken Cheese Sizzler Momo.....	₹429

tandoori momos

Paneer Tandoori Momo.....	₹285
Chicken Tandoori Momo.....	₹309

dessert

Chocolate Momo.....	₹59
Chocolate Momo Platter (4pcs)	₹199

chilli momo

New Veg Delight Chilli Momo	₹179
Veg Darjeeling Chilli Momo.....	₹245
Corn Cheese Chilli Momo.....	₹309
New Chicken Delight Chilli Momo	₹179
Chicken Darjeeling Chilli Momo.....	₹255
Chicken Cheese Chilli Momo	₹329



moburg

Veggie Moburg	₹89
Corn Cheese Moburg	₹129
Chicken Moburg.....	₹99
Chicken Cheese Moburg	₹139
New Veg Momo Pav.....	₹59
New Chicken Momo Pav	₹69



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Combo@ ₹99

109



Original Mint Mojito Virgin Mojito Kola Khatta Green Apple



Therefore, the claim of the Plaintiff in the plaint that ‘WOW! BURGER’ is its trademark and that it has been in continuous and extensive use of the same, is not bonafide and is instead misleading.

13.2. This Court also perused the website of the Plaintiff¹⁶, as per the said website there are only three brands that Plaintiff uses for selling its products i.e., ‘WOW MOMO’, ‘WOW CHINA’, and ‘WOW CHICKEN’. These are the marks which are the source identifier of the Plaintiff.

Significantly, food item ‘Burger’ is being sold by the Plaintiff only under its brand ‘WOW! MOMO’ and ‘WOW! CHICKEN’. And even more significantly, the food item Burger is not listed as ‘WOW BURGER’ in the menu but instead as ‘**Moburg**’ under the brand ‘WOW MOMO’ and simply as ‘**Louder Chicken Burger**’ under its brand WOW CHICKEN. This Court failed to find any mention of ‘WOW! BURGER’ anywhere on the Plaintiff’s website. The relevant screenshot of the Plaintiff’s website is reproduced as under:

WOW MOMO



Moburg															
Veggie Moburg	241.36	8.68	35.22	3.74	5.59			x	x	x	✓	x	x	✓	
Chicken Moburg	286.36	12.32	34.84	3.95	9.03			x	x	x	✓	x	x	✓	
Burger Bun	257	3.82	45.7	9.16	9.94			x	x	x	x	x	x	✓	
Corn Cheese Moburg	620.09	15.33	100.13	9.66	15.9			x	✓	x	✓	x	x	✓	
Chicken Cheese Moburg	617.05	17.05	92.31	10	19.09			x	✓	x	✓	x	x	✓	

WOW CHICKEN



Louder Chicken Burger	252.99	10.99	27.67	2.7	10.85			x	x	x	x	x	x	✓	
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13.3. Presumably ‘**Moburg**’/MOBURG is a combination of MOMO and BURGER, which further shows that Plaintiff is attempting to carve out a distinct name for its BURGER items instead of ‘WOW! BURGER’.

¹⁶ At <https://wowmomodashboard.com/links/wow-momo-nutrition/>.



13.4. The sales figure and the advertisement expenditure which has been averred in the plaint relates to ‘WOW! MOMO’ as a brand/trademark and has no correlation with erstwhile menu item i.e., ‘WOW! BURGER’.

13.5. In view of the aforementioned facts the Plaintiff has instead failed to show that ‘WOW! BURGER’ was even being used as a trademark/brand ever. Further in view of the last usage in 2018 of the said mark as a mere menu item (which is even otherwise not registered), this Court is of the opinion that ‘WOW! BURGER’ is not the trademark/brand of the Plaintiff.

The Plaintiff has tried to mislead the Court by averring that ‘WOW! BURGER’ is its trademark/brand.

13.6. Learned senior counsel for the Plaintiff has relied upon the judgment of this Court in **Cadbury India** (supra) to contend that though there is disclaimer in some of its registrations, it would not disentitle the Plaintiff from enforcing its subsequent registered mark vis-à-vis ‘WOW’ in subsequent registered formative marks. This Court has come to a conclusion that ‘WOW! BURGER’ is not a trademark/brand of the Plaintiff and that ‘WOW! BURGER’ as a mark is not even being used by the Plaintiff currently. Therefore, in light of the said findings of this Court the judgement in **Cadbury India** (supra) will not apply to the facts of the present case as the said judgment relates to infringement of a registered trademark.

Comparison of the marks of Plaintiff and Defendant No.1

13.7. The Plaintiff contends that the competing marks should be assessed in their entirety, yet a perusal of the plaint shows that the Plaintiff is trying to bring the spotlight on the mark ‘WOW!’ as the source identifier and claims that its exclusivity has been infringed. In the considered opinion of this Court the source



identifier of the Plaintiff is the composite mark ‘WOW! MOMO’ when taken as a whole and not the mark ‘WOW!’.

13.8. The Plaintiff has placed on record details about various awards and investments received by the Plaintiff; this Court has perused the said record and is of the opinion that none of the said documents relates to either ‘WOW! BURGER’ and/or standalone ‘WOW!’, instead all of that material/documents relates to composite mark ‘WOW! MOMO’. Therefore, the assertion of the Plaintiff that ‘WOW!’ is their source identifier, is false and incorrect, instead the source identifier of the Plaintiff is the composite mark i.e., ‘WOW! MOMO’.

13.9. In disputes relating to trademark infringement, deceptive or confusing similarity is the essential requirement. Composite marks are generally evaluated as a whole, consistent with the anti-dissection rule and from the perspective of the average consumer with imperfect recollection. However, where a component forms the dominant or essential feature of a composite mark (which is not the case in the present facts), copying that element can suffice for relief sought; still, this principle does not allow a proprietor to monopolize descriptive, generic, or laudatory terms.



13.10. Keeping in mind these principles, it would be pertinent to reproduce the marks of the Plaintiff and the Defendant. This Court consciously declines to compare the mark ‘WOW! BURGER’, with the mark of the Defendant No.1 as urged by the Plaintiff, because at this prima facie interim stage, the Court has already observed that ‘WOW! BURGER’ is not the Plaintiff’s trademark/brand; therefore, the relevant comparison has to be between the Plaintiff’s registered mark ‘WOW! MOMO’ and Defendant No. 1’s mark.

Plaintiff’s mark	Defendant’s mark
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13.11. The comparison of the above reproduced marks reveals that except for the use of the words i.e., 'WOW' nothing in the said marks relate them to each other. The colour combination, stylization and the theme of the two marks is completely different. The usage of like words which are common English Dictionary words would be of no avail, because the use of these words in absence of registration as a composite mark and/or in absence of secondary meaning attached to it the same cannot be afforded protection of infringement.

13.12. It is also relevant to note that the theme of the Plaintiff's brand is yellow which has been consistent all across its product range, which on the other hand is not the case with the mark of the Defendant No.1 which is in only red and white.

13.13. It would be further relevant to note that from the documents placed on record, the Defendant No.1 using the mark  and  in Hong Kong is selling burger which are of a specific type i.e., protein-rich vegetarian burger and as per the LinkedIn post, relied upon by the Plaintiff, it is the same type of burger, which the said post says Defendant No.1 will bring in India, on the other hand perusal of the current menu of the Plaintiff shows that the Plaintiff is selling vegetarian and non-vegetarian burger in the name of 'Moburg'.

13.14. Therefore, in the considered opinion of this Court, there is no deceptive/confusing similarity between the trademarks of the Plaintiff and the Defendant No.1.

13.15. Learned senior counsel for the Plaintiff has relied upon the judgment of this Court in **Sona Mahindra** (supra) to contend that disclaimer in the trademark



registrations does not travel to the market place and for the purpose of comparison, a disclaimed portion can also be considered along with the mark as a whole for the purpose of ascertaining whether infringement has happened or not.

This Court has compared the mark of the Plaintiff 'WOW MOMO' and the Defendant No.1's mark 'WOW BURGER' and as noted above has not found the same to be similar.

Conclusion

14. Before concluding, it would be pertinent to mention that this Court gets a distinct impression from the averments in the plaint that the Plaintiff is trying to appropriate/monopolize the use of the dictionary word 'WOW' which this Court cannot allow, considering the common nature of the word.

15. Therefore, in the overall conspectus, the Plaintiff has not been able to make out a *prima facie* case in its favour for grant of injunction. There is no balance of convenience in its favour and therefore, there is no question of injury.

16. Accordingly, the captioned application stands dismissed.

17. Opinion expressed by this Court herein-above are only limited to deciding this application at the present interim and prima facie stage and would not have any bearing on the merit of the matter.

CS(COMM) 1161/2024

18. List on **15.01.2026**.

**MANMEET PRITAM SINGH ARORA
(JUDGE)**

SEPTEMBER 12, 2025/SK

Click here to check corrigendum, if any