



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

TUESDAY, THE 24TH DAY OF JUNE 2025 / 3RD ASHADHA, 1947

FAO NO. 221 OF 2018

AGAINST THE ORDER DATED 24.11.2018 IN I.A No.5581 of 2018 in OS
NO.34 OF 2018 OF II ADDITIONAL DISTRICT COURT,ERNAKULAM

APPELLANTS/RESPONDENTS/DEFENDANTS:

- 1 LAKE MOUNT EDUCATIONAL SOCIETY
CHEMPU P.O., KOTTAYAM DISTRICT, PIN-686615 REPRESENTED BY
ITS SECRETARY
- 2 LAKE MOUNT GLOBAL PUBLIC SCHOOL,
THIRUVANKULAM, ERNAKULAM, KERALA, PN-682 309 REPRESENTED BY
ITS PRINCIPAL

BY ADV SRI.J.ABHILASH

RESPONDENT/PETITIONER/PLAINTIFF:

GLOBAL EDUCATIONAL TRUST
NO.97,CANAL ROAD, GIRINAGAR, COCHIN-682 020

BY ADVS.
SRI.AJITH VISWANATHAN
SRI.P.ABRAHAM CHERIAN
SRI.P.VISWANATHAN (SR.)

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
18.06.2025, THE COURT ON 24.06.2025 DELIVERED THE FOLLOWING:



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JUDGMENT

(Dated this the 24th day of June 2025)

1. Appellants are the defendants in O.S. No.34/2018 on the files of the Second Additional District Judge, Ernakulam, filed under the Trade Marks Act, 1999. The defendants are challenging the order of a temporary injunction granted by the Trial Court in I.A. No.5581/2018 filed by the plaintiff, restraining the defendants and persons claiming under them from offering educational services by using the trade name 'GLOBAL PUBLIC SCHOOL' as their trade name or as part of their trade name.
2. The short facts necessary for the disposal of this Appeal alone are stated: The respondent/plaintiff is a Trust by name, Global Education Trust. The plaintiff established a school by name Global Public School in the year 2006 and has been running the same at Thiruvaniyoor and kindergarten schools at Padamugal



and Panampilly Nagar, all in Ernakulam District. The Global Public School of the plaintiff is affiliated to the Central Board of Secondary Education, New Delhi, and follows the syllabus prescribed by the said Board. The plaintiff has obtained registration for their trade name 'GLOBAL PUBLIC SCHOOL' in India under Trademark No.1476968 in Class 41 with effect from 07.08.2006. The case of the plaintiff is that on 12.07.2018 certain parents of the students brought to the notice of the plaintiff that the respondents have been using the name Global Public School as a part of their name as 'LAKE MOUNT GLOBAL PUBLIC SCHOOL' and thereby disguising the second respondent school as an establishment promoted by the plaintiff or of an affiliate or as a franchise by the plaintiff. The plaintiff claims that, being the registered proprietor of the trade name GLOBAL PUBLIC SCHOOL, the plaintiff has the exclusive right to use the same and the use of a name which incorporates the



whole trade name of the plaintiff without permission of the plaintiff by the defendants is infringement of the trade mark of the plaintiff.

3. The defendants resisted the contention, contending *inter alia*, that the second defendant school has been functioning since the year 2010. The defendants have never adopted or used the trade name GLOBAL PUBLIC SCHOOL and have caused damages to the plaintiff. The names of the plaintiff and the defendants are distinctively different, and no one could pass off one for the other. There is no passing off or infringement from the part of the defendants by using the name LAKE MOUNT GLOBAL PUBLIC SCHOOL. The words GLOBAL, PUBLIC and SCHOOL are generic words and hence the plaintiff cannot claim exclusive right over these words as the word GLOBAL PUBLIC SCHOOL is neither an invented nor coined word.



4. The Trial Court granted the aforesaid temporary injunction as per the impugned order after considering the rival contentions and the materials before it.
5. I heard the learned Counsel for the appellants, Sri. J. Abhilash and the learned Senior Counsel for the respondent, Sri. P. Viswanathan, instructed by Adv. Sri. Ajith Viswanathan.
6. The learned Counsel for the appellants contended that the trade names of the plaintiff and the defendants are not deceptively similar to one another. The learned counsel invited my attention to the definition of the word 'deceptively similar' under Section 2(1)(h) of the Trade Marks Act, 1999, which provides that a mark shall be deemed to be deceptively similar to another mark if it is so nearly resembles that other mark as to be likely to deceive or cause confusion. The learned counsel contended that both the names are phonetically and visually different on comparison and hence it would not likely to deceive or confusion. The



learned counsel contended that the presentation of the words by the defendants are different from the presentation of the trade name of the plaintiff. The school of the defendants are situated 10 Kms away from the school of the plaintiff. The plaintiff has brought the suit only in the year 2018 whereas the defendants have been using their trade name since the year 2010. This fact alone is sufficient to hold that the plaintiff did not opt to file the suit during all these years only because of the fact that the use of the trade name by the defendants did not cause any confusion or deception. The words GLOBAL, PUBLIC and SCHOOL are generic words and hence the plaintiff cannot claim exclusive use of the said words. The learned Counsel cited the decision of the Hon'ble Supreme Court in **Skyline Education Institute (India) Private Ltd. v. S.L. Vaswani & Anr. [2010 KHC 4009]** and the decision of the Bombay High Court in **Orange City Mobile Collection v. City Collection, Nagpur**



and Ors. [2017 KHC 3922] in support of his contentions. The learned counsel concluded his argument by praying to set aside the impugned order passed by the Trial Court.

7. The learned Senior Counsel for the respondent contended that the evidence on record would reveal that the plaintiff is the prior user of the trade name GLOBAL PUBLIC SCHOOL as it has been using the said trade name since the year 2006 whereas the defendants have been using the said trade name only from the year 2010. The plaintiff is the registered user of the trade name GLOBAL PUBLIC SCHOOL. Hence, the rights of the plaintiff are protected by Section 28 of the Trade Marks Act, 1999 and the plaintiff is entitled to get temporary injunction in respect of the infringement of trade mark protected by the Trade Marks Act, 1999. The learned Senior Counsel invited my attention to Section 29(3) of the Trade Marks Act, which provides that the Court shall presume that it is likely to cause



confusion on the part of the public in cases falling under clause (c) of Section 29(2). As per sub-clause (c), it is sufficient if the offending trade mark is likely to have an association with the registered trade mark. The learned Senior Counsel cited the decisions of the Hon'ble Supreme Court in **Laxmikant V. Patel v. Chetanbhai Shah and Anr. [(2002) 3 SCC 65]**, **Godfrey Philips India Ltd. v. Girnar Food and Beverages (P) Ltd. [(2004) 5 SCC 257]**, **Ramdev Food Products Pvt. Ltd. v. Arvindbhai Rambhai Patel and Ors. [(2006) 8 SCC 726]**, **Wockhardt Limited v. Torrent Pharmaceuticals Ltd. and Anr. [(2018) 18 SCC 346]** and **Renaissance Hotel Holdings Inc. v. B. Vijaya Sai and Ors. [(2022) 5 SCC 1]** and the decisions of this Court in **National Garments v. National Apparels [1989 (1) KLT 855]**, **Jaleel Associates v. Hotel Sagar [2005 (1) KLT 757]** and **Hotel Seagull v. Seagulls Catch Restaurant Pvt. Ltd. and Anr. [2015 KHC 7059]** and the decision of the Delhi



High Court in **Under Armour Inc. v. Anish Agarwal and Ors., [MANU/DE/3797/2025]** in support of his contentions.

8. I have considered the rival contentions.
9. In **Skyline (supra)**, the Hon'ble Supreme Court refused the prayer for injunction holding that the mark used in that case, namely, 'Skyline' is devoid of any distinctive character. It is found that nearly 117 companies and institutions have been operating by using the word 'skyline' as part of their name/nomenclature. The said decision is clearly distinguishable on facts of the present case. It is well settled by the decision of the Hon'ble Supreme Court in **Laxmikant (supra)** that an action for passing off will lie wherever the defendant's company's name or its intended name is calculated to deceive so as to divert the business from the plaintiff or to occasion a confusion between the two business and that where there is probability of confusion in business an injunction will be granted even though the



defendants adopted the name innocently. In the case on hand, both establishments are in the same field of business, namely, imparting education by running schools. Both the schools are situated within Ernakulam district and within a distance of 10 Kms. It is also held in the said decision that where the defendant has imitated or adopted the plaintiff's distinctive trade name or business name, the order may be an absolute injunction that he would not use or carry on under that name. Admittedly, the first defendant, Society, has been running three schools. The other two schools are LAKE MOUNT PUBLIC SCHOOL, Kattikkunnu, and LAKE MOUNT INTERNATIONAL PUBLIC SCHOOL, Vaikom, both are situated in Kottayam district. When the first defendant started the second defendant school in Ernakulam district in the year 2010 it started using the trade name GLOBAL PUBLIC SCHOOL along with its name LAKE MOUNT. Prima facie, it would indicate that the intention of the first defendant is



to divert the business of the plaintiff by causing confusion among the public by using a similar trade name.

10. In **Godfrey Philips (supra)**, the Hon'ble Supreme Court has held that a descriptive trade mark is entitled to protection if it has assumed a secondary meaning which identifies it with a particular product or as being from a particular source. Of course, as rightly contended by the learned counsel for the appellants that the words GLOBAL, PUBLIC, and SCHOOL are generic words. But the use of these words in combination by the plaintiff obtained a secondary meaning for those descriptive combination words of the plaintiff. In the field of education, the plaintiff has obtained a distinct name by use of its trade mark GLOBAL PUBLIC SCHOOL. Hence, even though each of the words used by the plaintiff in its trade mark is a generic word, on account of the use of the said words in combination, the trade mark of the plaintiff has obtained a distinctive meaning, thereby



acquiring a secondary meaning in the field of education. The trade mark of the plaintiff has become a part of the goodwill of the business of the plaintiff.

11. In **Orange City Mobile Collection (supra)**, the Bombay High Court quashed the order of temporary injunction granted by the Trial Court holding that there was no material to indicate that by the use of the trade name by the defendant, 'Orange City Mobile Collection' as against the trade name of the plaintiff 'City Collection', the customers were misled or deceived. In **Ramdev Food Products (supra)**, the Hon'ble Supreme Court elaborately considered the parameters for granting injunction in a trade mark suit alleging infringement of trade mark. It is held that if the trade mark is registered, indisputably, the user thereof by a person who is not authorised to do so would constitute infringement. The trade mark of the plaintiff is a registered one. In such a case, the plaintiff has got exclusive right to use the



said trade mark. Hence, the defendant has no right to use the trade mark of the plaintiff. The Hon'ble Supreme Court has held that in an infringement action, an injunction would be issued if it is proved that the defendant is improperly using the plaintiff's trade mark; that in an action for infringement where defendant's trade mark is identical with plaintiffs mark, the court will not enquire whether the infringement is such as is likely to deceive or cause confusion and that the test, therefore, is as to likelihood of confusion or deception arising from the similarity of marks is the same both in infringement and passing off actions. Here, the use of the trade name GLOBAL PUBLIC SCHOOL by the defendants along with its name would prima facie create confusion in the minds of the general public that the second defendant school is an institution having a connection with the plaintiff's Society. Such confusion could be presumed when both schools have been functioning within a distance of 10 Kms



in the same district. I am unable to accept the argument of the learned counsel for the appellants that the names are phonetically different since the name of the second defendant school contains the registered trade mark of the plaintiff GLOBAL PUBLIC SCHOOL. The schools are always referred to by name. Even if the visual representation of the trade name is different, that would not entitle the defendants to use the trade name of the plaintiff. When the school of the plaintiff is referred to by its name, it is the phonetic representation alone is relevant and the visual representation is irrelevant. The contention of the counsel for the appellant that there is delay on the part of the plaintiff in bringing an action for infringement is unsustainable in view of the Hon'ble Supreme Court in **Ramdev Food Products (supra)** holding that in an infringement of trade mark delay by itself may not be a ground for refusing to issue an injunction, following the earlier decision of the Hon'ble Supreme Court in



Midas Hygiene Industries (P) Ltd v. Sudhir Bhatia and Ors. [(2004) 3 SCC 90]. In **Ramdev Food Products (supra)**, the Hon'ble Supreme Court specifically held that when a prima facie case is made out and the balance of convenience is in favour of the plaintiff, it may not be necessary to show more than loss of goodwill and reputation to fulfil the condition of irreparable injury and that if the first pre-requisites are fulfilled, in trade mark actions irreparable loss can be presumed to have been taken place. In **Midas (supra)**, the Hon'ble Supreme Court held that in case of infringement either of trade mark or of copyright, normally an injunction must follow; that mere delay in bringing an action is not sufficient to defeat grant of injunction in such cases and that the grant of injunction also becomes necessary if it prima facie appears that the adoption of the mark itself was dishonest.



12. In **Wockhardt (supra)**, the Hon'ble Supreme Court held that though passing off is in essence an action based on deceit, fraud is not a necessary element of a right of action and that the defendant's state of mind is wholly irrelevant to the existence of a cause of action for passing off, if otherwise, the defendant has imitated or adopted the plaintiffs mark. In the case on hand, the defendants have imitated the trade mark of the plaintiff by using the words Global Public School with their name.
13. In **Renaissance Hotel (Supra)**, the Hon'ble Supreme Court held : "The legislative scheme is clear that when the mark of the defendant is identical with the registered trade mark of the plaintiff and the goods or services covered are similar to the ones covered by such registered trade mark, it may be necessary to prove that it is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark. Similarly, when the trade mark of the plaintiff is similar to the registered trade mark of the defendant and the goods or services



covered by such registered trade mark are identical or similar to the goods or services covered by such registered trade mark, it may again be necessary to establish that it is likely to cause confusion on the part of the public. However, when the trade mark of the defendant is identical with the registered trade mark of the plaintiff and that the goods or services of the defendant are identical with the goods or services covered by registered trade mark, the Court shall presume that it is likely to cause confusion on the part of the public”.

14. This Court in **National Garments (supra)** held that, for a temporary order in an action passing off, the plaintiff need not in general show a strong prima facie case; that the prima facie case that is required to be shown must be something more than a case that will avoid the action being struck out as frivolous and vexatious; and that even if the chances of success at the trial is 20%, the interim relief sought for is required to be granted. This court in **Jaleel Associates (supra)** held that in an action for



passing off, actual deception is not necessary and it is enough if there is likelihood of deception. Following the decision of the Hon'ble Supreme Court in **Laxmikant (supra)**, it is further held that the absence of intention to deceive or defraud is not a defence in an action for passing off because the basic ethics in the world of business are honesty and fair play.

15. In **Hotel Seagull (supra)**, it is held that it is trite that similarity of two marks is to be examined in the context of unwary person of average intelligence and imperfect recollection; that in an action for passing off when the area of activity are identical and the trade mark is similar, the only question to be seen is as to who is the prior user.
16. In the light of the legal principles enunciated as above, considering the facts available in the present case, I find that the plaintiff has made out a prima facie case for the grant of injunction. The plaintiff has every right to protect its registered



trade mark, which the plaintiff started using prior to the use of the defendants. The Trial Court is perfectly justified in granting the order of temporary injunction in favour of the plaintiff.

17. Accordingly, this Appeal is dismissed confirming the impugned order passed by the Trial Court.

Sd/-

M.A.ABDUL HAKHIM

JUDGE

Shg/jma