



2025:DHC:269



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

% ***Judgment Reserved on: 29.11.2024***
Judgment pronounced on: 20.01.2025

+ **CS(COMM) 405/2024 with I.A. 11282/2024, I.A. 11283/2024,
I.A. 11285/2024, I.A. 42356/2024**

**BROAD PEAK INVESTMENT HOLDINGS
LTD. AND ANR.**

.....Plaintiffs

Through: Ms. Shwetasree Majumder, Ms. Priya
Adlakha, Ms. Sucharu Garg and
Ms. Shilpi Sinha, Advocates

versus

**BROAD PEAK CAPITAL ADVISORS LLP
AND ANR.**

.....Defendants

Through: Mr. Ramesh Singh, Senior Advocate
with Mr. Mohit D. Ram and
Ms. Nayan Gupta, Advocates

**CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL**

JUDGMENT

AMIT BANSAL, J.

I.A. 11282/2024 (Under Order XXXIX Rules 1 & 2 CPC)

1. By way of the present judgment, I shall decide the captioned application filed on behalf of the plaintiffs under Order 39 Rule 1 and 2 of the Civil Procedural Code, 1908 (CPC).
2. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the trademarks of the plaintiffs



and passing off their business as that of the plaintiffs and other ancillary reliefs.

3. Summons in the suit and notice in the application were issued on 31st May, 2024.

4. Reply to the interim application was filed on behalf of the defendants on 27th July, 2024 and the rejoinder thereto has also been filed by the plaintiffs on 20th August, 2024. However, no *ad interim* injunction order was passed in favour of the plaintiffs.

5. Thereafter the matter was listed on various dates and pleadings have been completed in the suit. The application was heard on 21st October, 2024, 6th November, 2024, 26th November, 2024 and 11th November, 2024, when the judgment was reserved.

CASE SET UP IN THE PLAINT

6. Briefly stated, the case set up in the plaint is as follows.

7. The plaintiff no.1 is a company incorporated in the year 2006 under the laws of Cayman Islands. The plaintiff no.2 was incorporated in Singapore in 2006 as a subsidiary of the plaintiff no.1.

8. The plaintiffs are leading investment advisers/managers for several pan-Asia-focused investment funds, which invest principally across equities and credit.

9. The plaintiffs have been using the mark 'BROAD PEAK' in their trade names and marketing the same since their incorporation in 2006.

10. The plaintiffs have secured various registrations in respect of 'BROAD PEAK' in various jurisdictions across the world, details of which are set out in paragraph no.10 of the plaint. The earliest registrations in Singapore and U.K. date back to 2007.



2025:DHC:269



11. The plaintiffs have also registered a domain name 'broadpeakinv.com' on 19th September, 2006, which is used to host the e-mail addresses of the plaintiffs as well as their related entities.

12. The plaintiffs have been providing investment advisory services with respect to their investment holdings and funds in India since 2008 under the trade name/trading style 'BROAD PEAK'. The plaintiffs have filed various e-mail correspondence with Indian entities with regard to their Indian activities from 2008 as well as accounts statements for their investments in India.

13. The plaintiff no.1 is the registered proprietor of the word mark 'BROAD PEAK' in India with effect from 15th February, 2017 in class 36, which is valid and subsisting. The plaintiffs applied for registration of their trademark 'BROAD PEAK' in India on a '*proposed to be used*' basis since the actual use documents of the plaintiffs dating back to 2008 were not traceable. Subsequently, these documents were traced which showed that the plaintiff group has been using the said mark since 2008.

14. In February, 2017, the plaintiff learnt that the defendant no.2 has set up an asset management company under the name 'Broad Peak Capital Advisors LLP'. Accordingly, the plaintiff issued a legal notice dated 20th February, 2017 to the defendant no.2 apprising him of the plaintiffs' prior common law rights in the trademark 'BROAD PEAK' and calling upon him to cease-and-desist the use of 'BROAD PEAK'. No response was received by the plaintiffs to the aforesaid notice.

15. Thereafter, sometime in July, 2020, the plaintiffs came to know that the defendant no.2 is continuing to do business using the mark 'BROAD



2025:DHC:269



PEAK’ and has also filed two applications for registration of the impugned mark ‘BROAD PEAK’ with the Trade Marks Registry on 15th March, 2017.

16. The Trade Mark Registry, in its examination report dated 8th July, 2017, raised an objection under Section 11(1) of the Trade Marks Act, 1999 (hereinafter ‘Trade Marks Act’) to the defendant no.2’s application by citing the plaintiffs’ prior application for the identical word mark ‘BROAD PEAK’ in the same class as a conflicting mark. In its response to the examination report, the defendant no.1 claimed that the plaintiff no.1’s application is filed on a ‘*proposed to be used*’ basis whereas the defendant no.1 claimed actual use of the impugned mark since 30th August 2016. On the basis of the aforesaid, the defendant no.1 was granted registration in respect of the impugned mark ‘BROAD PEAK’.

17. Another e-mail dated 6th August, 2020 was sent by the plaintiffs to the defendant no.2 and to one Mr. Shiv Krishnan, whose name was mentioned as one of the managing directors on the website of the defendant no.1, calling upon them to stop using the mark ‘BROAD PEAK’. The defendant no.2 replied to the said notice and refused to comply.

18. In the meantime, the plaintiffs also came to know that the defendants are also conducting business in the USA under the name ‘Broad Peak Capital Advisors LLC’, wherein Mr. Shiv Krishnan is the managing director. Another cease-and-desist notice was sent on 1st October, 2020 by the plaintiffs to Mr. Shiv Krishnan via e-mail.

19. Mr. Shiv Krishnan executed a settlement agreement dated 20th December, 2020 with the plaintiffs agreeing to cease the use of the mark ‘BROAD PEAK’



20. Thereafter, on 16th March, 2021, the plaintiff sent another legal notice to the defendant no.2 detailing the terms of the settlement agreement executed between the plaintiff and Mr. Shiv Krishnan and calling upon the defendant no. 2 to refrain from using the aforesaid mark.

21. The defendants no.1 and 2 replied to the aforesaid notice *via* a letter dated 9th April, 2021 asserting their rights over the said mark. It was also stated in the aforesaid letter that the settlement agreement with Mr. Shiv Krishnan would not be binding on them. The plaintiffs sent a rejoinder letter dated 1st June, 2021, wherein it was pointed out that there is an obvious connection between the defendant no.2 and Mr. Shiv Krishnan as the name of the defendant no.2 is listed as managing director on the website of Mr. Shiv Krishnan's US firm, 'www.bpcglobaladvisors.com'.

22. Since there was no further response by the defendants, plaintiffs filed rectifications against the two registration applications of the defendant no.1 before the Trade Marks Registry. Both the aforesaid rectifications are currently pending before the Trade Mark Registry.

23. As a counterblast to plaintiffs' rectifications, in April/May 2022, the defendant no.1 also filed a rectification petition against the plaintiffs' registration for the mark 'BROAD PEAK' in class 36 claiming non-use of the mark by the plaintiffs. The said rectification is also pending adjudication before the Trade Mark Registry.

24. The plaintiffs sent another communication dated 3rd March, 2023 to the defendants' counsel to explore the possibility of amicable resolution of the dispute. However, the same did not receive any response.



25. The plaintiffs have placed on record documents to evidence that there is confusion in the market on account of the defendants operating under an identical name.

CASE SET UP IN THE WRITTEN STATEMENT

26. Both the defendants no.1 and 2 have filed a common written statement wherein the following averments have been made.

27. The defendant no.2 is a seasoned private equity professional with over 25 years of investing experience in reputed private equity funds and is a well-known figure in the industry.

28. The defendants adopted the mark 'BROAD PEAK' by incorporating the defendant no.1 company under the name 'Broad Peak Capital Advisors LLP' on 30th August, 2016. Prior to the incorporation of the defendant no.1, the defendant no.2 searched the websites of the Registrar of Companies as well as the Trade Marks Registry and did not find any similar name/mark. The defendants also registered the website domain 'www.broadpeakadvisors.com' on 1st October, 2016.

29. The defendants have been doing business under the aforesaid mark since 13th August, 2016 and the continuous and extensive use of the mark 'BROADPEAK' since 30th August, 2016 has resulted in the defendants acquiring significant reputation and goodwill in respect of the aforesaid mark.

30. The defendants have given their turnover figures in paragraph 12 of the written statement from the year 2016-17 up to 2023-24. The turnover of the defendants in the financial year 2023-24 was to the tune of Rs. 83,00,000/-.



31. It is stated that the US entity of Mr. Shiv Krishnan is not a group/allied company of the defendant no.1, but only shares a common marketing platform for business opportunities in the USA. The partnership with Mr. Shiv Krishnan is only towards marketing to customers in the USA. It is further stated that the defendant no.1 is not a party to the settlement agreement between the plaintiffs and Mr. Shiv Krishnan's US entity and, therefore, the said agreement cannot bind the defendants.

32. It is denied that there is any confusion in the market. The email dated 10th November, 2023 relied upon by the plaintiffs to claim confusion appears to be fabricated/manipulated.

33. Even after the first legal notice was sent by the plaintiffs to the defendants on 20th February, 2017, the subsequent notice was sent only on 6th August, 2020. This delay amounts to acquiescence on the part of the plaintiffs.

SUBMISSIONS OF THE PLAINTIFFS

34. Ms. Shwetasree Majumder, learned counsel appearing on behalf of the plaintiffs has made the following submissions:-

i. The plaintiff is the registered proprietor as well as the prior adopter of the word mark 'BROAD PEAK' in class 36 both internationally as well as in India. The defendants have adopted an identical mark in respect of identical services as that of the plaintiff.

ii. The plaintiff's trade mark as well as business has substantial goodwill and reputation and the defendants' adoption of an identical mark shall cause confusion among the consumers and trade channels.



iii. The defendants have not given any plausible reason for the adoption of a mark identical to the mark used by the plaintiffs. Hence, the adoption of the said mark by the defendants is dishonest.

iv. The dishonest conduct of the defendants is evident from the fact that upon receiving the first legal notice from the plaintiffs on 20th February, 2017, the defendants immediately applied for registration of identical trademarks on 15th March, 2017 with the user claim of 30th August, 2016.

v. There is a clear connection between the defendants and Mr. Shiv Krishnan. Mr. Shiv Krishnan was shown as one of the managing directors on the website of the defendant no.1 and the defendant no.2 was shown as a managing director on the website of the US Firm of Mr. Shiv Krishnan. Therefore, the settlement entered into between the plaintiff and Shiv Krishnan would have a bearing on the defendants as well.

vi. As is evident from the documents filed along with the plaint, there is actual confusion in the mark/trade channel between the plaintiffs and the defendants since both of them use the same mark.

SUBMISSIONS OF THE DEFENDANTS

35. Mr. Ramesh Singh, learned senior advocate appearing on behalf of the defendants has made the following submissions:-

i. There is a significant difference in the business activities of the plaintiffs and the defendants. The defendant no.1 is a private equity professional/investment advisor, whereas the plaintiffs are either a Foreign Portfolio Investor (FPI) who are buying and selling stocks and other instruments of listed companies or are the owners of foreign funds involved in the business of selling financial products. Therefore, the



customer/consumer base of the plaintiffs and the defendants are totally different.

ii. Both the plaintiffs and the defendants are providing their services to sophisticated investors who are highly qualified financial/business professionals who would not ordinarily get confused between the plaintiffs and the defendants.

iii. The plaintiffs have no physical presence in India and the plaintiffs have filed their trade mark application for the impugned mark in India despite having knowledge of the defendants' presence. Further, the plaintiff no.1's application was on a '*proposed to be used*' basis and no user document was filed along with the said application. The explanation offered by the plaintiffs that the application was filed on a 'proposed to be used' basis as the user documents were not traceable is not plausible.

iv. The plaintiffs provide services to certain targeted clients and the documents filed by them are all private use documents. The evidence placed on record by the plaintiffs with regard to the prior use of the mark 'BROAD PEAK' in India is limited to a few transactions only, which do not establish any reputation or goodwill of the plaintiffs in the Indian market.

v. The defendants are honest and concurrent users of the mark 'BROAD PEAK'. The defendants had no knowledge of the plaintiffs' existence in India prior to 15th February, 2017.

vi. The settlement between the plaintiffs and Mr. Shiv Krishnan relates to a different company based in the U.S.A. and would have no bearing on the present suit.

vii. The plaintiffs had acquiesced in the use of the impugned mark by the defendants since the plaintiffs failed to take any legal action despite the



defendant's reply dated 9th April, 2021 to the legal notice sent by the plaintiffs.

SUBMISSIONS IN REJOINDER OF THE PLAINTIFFS

36. In rejoinder, Ms. Majumder has made the following submissions:-

i. The plaintiffs have demonstrated goodwill and reputation in the mark 'BROAD PEAK' in India through media articles, statutory filings, bank statements and other documents that illustrate their business in India and the consequential reputation derived from it.

ii. The test of likelihood of confusion is not limited to the businesses of the plaintiffs and the defendants being identical but also on account of the likelihood of association between the plaintiffs and the defendants.

ANALYSIS AND FINDINGS

37. I have heard the rival submissions and perused the material on record. Counsel for both sides have also placed reliance on various judgments in support of their submissions, which I have examined.

38. It is an undisputed position that the defendant no.1 company was incorporated on 30th August, 2016 under the name of 'Broad Peak Capital Advisors LLP' and since then, the defendants have been doing business in India under the said name on a continuing basis. The defendant no.1 also registered the domain name 'www.broadpeakadvisors.com' on 1st October, 2016.

39. The plaintiffs applied for the registration of the trademark 'BROAD PEAK' in class 36 on 15th February, 2017, which is after the adoption of the impugned mark by the defendants. Pertinently, the registration application filed on behalf of the plaintiffs was on a '*proposed to be used*' basis.



Immediately thereafter, the plaintiffs issued a legal notice dated 20th February, 2017 to the defendant no.2 asserting its rights over the trademark 'BROAD PEAK'. This seems to suggest that the plaintiffs were aware of the existence of the defendants at the time they applied for registration of the mark 'BROAD PEAK'.

40. The defendants also applied for registration of the trademark 'BROAD PEAK' in classes 35 and 36 on 15th March, 2017, which were subsequently granted in favour of the defendants. Therefore, in the present case, both the plaintiffs and the defendants hold registrations in respect of identical trademarks in the same class. In terms of Section 28 (3) of the Trade Marks Act, where two persons are the registered proprietors of an identical trademark, both have exclusive rights to use the said trademark. Therefore, in my *prima facie* view, a case for infringement cannot be made out at this stage.

41. Section 27(2) of the Trade Marks Act provides that *dehors* the provisions of the Trade Marks Act, an action of passing off would be maintainable. Therefore, even though the marks of both the plaintiffs and defendants are registered, an action of passing off would still be maintainable. Accordingly, I proceed to examine the present application on the ground of passing off.

42. Passing off is an action founded in common law based on the principle that no one has the right to represent their goods and services as those of someone else. The action of passing is based on goodwill and reputation generated on account of prior use of a mark.



43. In *S. Syed Mohideen v. P. Sulochana Bai*¹, the Supreme Court has laid down the triple test to be applied in cases of passing off. The three ingredients of passing off are the plaintiff's goodwill, misrepresentation by the defendant and the damage caused to the plaintiff's goodwill on account of such misrepresentation.

44. The same principles have been reiterated by the Supreme Court in *Satyam Infoway v. Siffynet Solutions*². The Supreme Court observed that in a passing off action, the plaintiffs have to show the volume of sales and the extent of advertising carried out by them to prove the reputation gained in their mark and the plaintiffs will also have to establish misrepresentation by the defendant to the public.

45. In its recent judgment in *Brihan Karan Sugar Syndicate v. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana*³, relying upon the observations in *Satyam Infoway* (supra), the Supreme Court held that the volume of sales and the extent of advertisement of the product in question would be considered relevant for deciding whether the appellant had acquired a reputation or generated goodwill.

46. In light of the legal principles adverted to above, one of the first requirements that the plaintiffs are required to fulfill is to establish their goodwill and reputation in the mark 'BROAD PEAK'. As noted above, the trademark application filed on behalf of the plaintiffs on 15th February, 2017 itself states that it is on a '*proposed to be used*' basis, which *ex facie* is an admission on behalf of the plaintiffs that they have not used the mark in India before the said date.

¹ (2016) 2 SCC 683

² (2004) 6 SCC 145

³ 2023 INSC 831



47. In the plaint as well as during the course of her submissions, Ms Majumder has contended that the use by the plaintiffs of the mark 'BROAD PEAK' in India has been since 2008, and it was only on account of a *bona fide* mistake that the application was filed on a 'proposed to be used' basis.

48. If that was the position, the plaintiff could have sought amendment of the registration certificate so as to claim user from a prior date, which they never did. In fact, the defendants were granted registration of the mark 'BROAD PEAK' on the basis of their use from 30th August, 2016. Even though the plaintiffs' mark came up in the examination report of the Registry as a conflicting mark, the defendants were granted registration since the plaintiffs' application was on a '*proposed to be used*' basis.

49. In support of its contention of being a prior user of the mark 'BROAD PEAK', the plaintiffs have filed the following documents showing that the plaintiffs conducted their business in India:

- i. Communication dated 8th August, 2008 issued by the Securities Exchange Board of India to Kotak Mahindra (UK) Limited granting registration of a sub-account in the name of the plaintiff's Mauritius-based fund entity.
- ii. E-mail correspondences of the plaintiffs with their counsel, banks and other companies regarding Indian projects for the period 2008-2012 along with account statements for their investments in India.
- iii. Letter dated 18th January, 2011 issued by Tata Steel Limited for allocation of equity shares to the plaintiff's Mauritius-based fund entity.



2025:DHC:269



- iv. Extracts from the Central Depository Services (India) Limited's website evidencing that the plaintiff no.2 is a registered Foreign Institutional/Portfolio Investor.
 - v. Copies of letters of disclosure filed by various banks, NBFCs and PSUs evidencing engagement with the plaintiffs.
 - vi. Extracts from media publications regarding deals and investments done by the plaintiffs in India.
50. I have examined the aforesaid documentary evidence filed on behalf of the plaintiffs. The documents placed on record by the plaintiffs' demonstrate that the plaintiff no.2 has been registered as a Foreign Portfolio Investor (FPI) and has been engaged in the activity of buying and selling stocks and other instruments of Indian companies during the period 2008-2016. However, the documents filed seem to indicate there were very limited transactions involving the plaintiffs. It is not the case of the plaintiffs that they have issued advertisements that have been widely circulated in India, nor have they placed any documents to show that they are among the leading FPIs in India.
51. All the aforesaid documents filed on behalf of the plaintiffs, at best, would demonstrate use by the plaintiffs of the mark in India, but it cannot be said that on the basis of such sporadic use, the plaintiffs have acquired reputation and goodwill in the mark in India. This aspect can only be established after parties are given the opportunity to lead evidence in trial.
52. The plaintiffs have also placed on record documents to show their international presence as well as their international trademark registrations.



In *Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries*⁴, the Supreme Court, was dealing with a case where the appellant (Toyota) had claimed goodwill and reputation in India in respect of a car model named ‘Prius’, which had acquired goodwill and reputation in other jurisdictions of the world. Applying the territoriality principle, the Supreme Court held that there must be adequate evidence to show that the plaintiff has acquired substantial goodwill and reputation for its mark in India. In view of the fact that there were very limited sales of the car in India and in the absence of any advertisement for the same, the Supreme Court held that the car had not acquired goodwill or reputation in India so as to vest the rights of a prior user in the plaintiff therein to successfully maintain an action of passing off against a registered owner.

53. Relying on the aforesaid judgment of the Supreme Court in *Toyota* (supra), I had observed in *Toyota Jidosha Kabushiki Kaisha v. Tech Square Engineering*⁵, that the petitioner (also Toyota) had failed to show its reputation and goodwill in respect of the mark ‘ALPHARD’ in India as the evidence on record showed very limited sales and use of the product in India. Further, since no advertisements were made by the petitioner in India, it could not be held that a substantial number of consumers knew of its brand ‘ALPHARD’.

54. Applying the aforesaid territoriality principle to the facts of the present case, while it can be said that the plaintiffs may be a well-known name internationally, but that by itself cannot be a ground to assume that there has been a spillover of the reputation and goodwill of the plaintiffs’

⁴ (2018) 2 SCC 1

⁵ 2023 SCC OnLine Del 583



mark in India. In my *prima facie* view the documents filed by the plaintiffs would not be sufficient to come to a view that the plaintiffs have acquired spillover of their goodwill and reputation in India.

55. Next, I will consider the aspect whether there has been any misrepresentation on the part of the defendants.

56. It is the stand of the defendants that the mark 'Broad Peak' was adopted in a *bona fide* manner by the defendants by incorporating a company under the name 'Broad Peak Capital Advisors LLP' on 30th August, 2016. At that point of time they were completely unaware of the plaintiffs or the fact that the plaintiffs were operating as 'Broad Peak'. The defendants had also stated in their written statement that they searched the websites of the Registrar of Companies, the Trade Marks Registry and internet domains before adopting the impugned name. Subsequently, the defendants also registered the domain name 'www.broadpeakadvisors.com' on 1st October, 2016 and the defendants have been continuously doing business under the said mark since then.

57. Even though the plaintiffs allege that the adoption of the impugned mark by the defendants was not *bona fide*, the plaintiffs have not placed on record anything to show that the defendants were aware that the plaintiffs were operating under the same name.

58. Therefore, in my *prima facie* view the adoption of the impugned mark by the defendants was *bona fide* and the use of the impugned mark by the defendants would constitute honest and concurrent use in terms of Section 12 of the Trade Marks Act.



59. There is another aspect which needs to be considered in the present case, viz. the business carried out by the parties and the nature of their clients.

60. In *Cadila Health Care v. Cadila Pharmaceuticals*⁶, the Supreme Court has held that one of the relevant factors to be considered for determining deceptive similarity between competing marks would be the purchaser's education, intelligence and degree of care exercised while buying the goods.

61. Relying upon the aforesaid test laid down in *Cadila* (supra), in *Khoday Distilleries v. Scotch Whiskey Association*⁷, the Supreme Court, while dealing with identical marks 'PETER SCOT' in respect of whiskey, held that purchasers of Scotch whisky are unlikely to be easily misled or deceived due to their awareness and familiarity with the product.

62. Relying upon the aforesaid judgments, in *Gensol Electric Vehicles v. Mahindra Last Mile Mobility*⁸, I have taken a view that a prospective purchaser of a car would not buy it on an impulse but would make an informed and well-thought-out decision. It was also observed that electric passenger vehicles and electric commercial vehicles are targeted at different segments of the public and therefore chances of confusion would be remote.

63. The defendant no.2 in the present case is a private equity professional with an experience of 25 years in the industry. The defendants' clients are either private equity investors investing in unlisted companies or unlisted companies who want to raise capital from private equity investors. On the other hand, the plaintiffs' are in the business of investment management and

⁶ 4 (2001) 5 SCC 73

⁷ (2008) 10 SCC 723

⁸ 2025 SCC OnLine Del 68



buying and selling equities and other listed instruments of various Indian listed companies. As stated in the plaint, the plaintiff no.2 acts as a discretionary investment manager of the various funds which are part of the plaintiffs' group, and these funds invest principally across equities and credits for the benefit of global institutional investors. Therefore, on a *prima facie* view, the businesses of the plaintiffs and the defendants appear to be different and the possibility of the plaintiffs and the defendants having common customers or clients seems to be remote.

64. Significantly, both the plaintiffs and the defendants are providing their services to sophisticated corporate entities, whose officials would be well-qualified in the field of business and finance. Therefore, it is highly unlikely that clients of such sophistication would get confused between the services offered by the plaintiffs and defendants.

65. The plaintiffs have filed the following documents in support of their contention that there is actual confusion in the trade:

- i. E-mail dated 24th October, 2023 sent by 'Morrow Sodali Global LLC' which was meant for the plaintiffs but was inadvertently copied to the defendant no.2.
- ii. Listing on a third-party website 'www.zoominfo.com' which suggests that 'Broad Peak Capital Advisors' which is registered in the USA is owned by both the plaintiffs and defendants providing the website address of the defendants.
- iii. E-mails dated 21st and 24th August, 2024 sent by 'With Intelligence', an independent fund research analyst group, which were meant for the plaintiffs but were accidentally sent to the defendant no.2's e-mail address.



66. The defendants have dealt with the aforesaid documents in the following manner:

- i. The sender of the e-mail dated 24th October, 2023 is a client of the plaintiffs, and it is unlikely that such a person would accidentally send an e-mail to two different e-mail addresses having different domain names, by accident. The e-mail appears to be fabricated/manipulated.
- ii. The defendants do not have any control over data provided by listings on third-party websites such as 'www.zoominfo.com' which operates as an Artificial Intelligence-based search engine.
- iii. The plaintiffs have not claimed that the e-mails dated 21st and 24th August, 2024 have been sent by a client of the plaintiffs.

67. At this interlocutory stage, on the basis of the aforesaid e-mails and listing, I cannot come to the conclusion that there is actual confusion in the trade. The plaintiffs would have to prove the aforesaid documents in trial to make out a case of actual confusion in the trade. Even if the aforesaid contention of the plaintiffs regarding actual confusion in the trade is accepted, in view of my findings above that the defendants are honest and concurrent users of the impugned mark and the plaintiffs have failed to establish goodwill or reputation of a prior user of the mark in India, the defendants cannot be restrained from using the impugned mark at this interlocutory stage.

68. The plaintiffs have also placed reliance on the settlement arrived at between the plaintiff no.1 and Mr. Shiv Krishnan in terms of which Mr. Shiv Krishnan has agreed not to use the mark 'BROAD PEAK'.



2025:DHC:269



69. In my view, the settlement agreement between the plaintiff no.1 and the US entity of Mr. Shiv Krishnan would not bind the defendants as the US entity of Mr. Shiv Krishnan and defendant no.1 are distinct legal entities and defendants are not a party to the said agreement.

70. In light of the discussion above, I am of the view that the plaintiffs have failed to make out a *prima facie* case for grant of interim injunction.

71. Balance of convenience is also in favour of the defendants for not granting interim injunction at this stage, as the defendants have been users of the impugned mark in India on a continuous basis since 2016.

72. Accordingly, I.A. 11282/2024 filed on behalf of the plaintiffs under Order XXXIX Rules 1 and 2 of the CPC is dismissed.

73. Needless to state, any observations made herein are only for the purpose of adjudication of the present application and would have no bearing on the final outcome of the suit.

CS(COMM) 405/2024

74. List along with pending applications on 8th April, 2025.

**AMIT BANSAL
(JUDGE)**

JANUARY 20, 2025