PROTECTING THE PATTERN: ANTI-DISSECTION, FAMILY OF MARKS, AND THE UNEASY EMERGENCE OF 'IDEA INFRINGEMENT' IN WOW! MOMO FOODS PVT LTD V. WOW BURGERS

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ABSTRACT

Wow! The Division Bench of the Delhi High Court made a choice. The case Momo Foods Pvt Ltd v. Wow Burgers [2024] affects how Indian courts look about protecting composite trademarks, notably in the fast-food restaurant market. The Bench overruled the Single Judge's judgment and said again that trademarks should be looked at as a whole, not by breaking them down into their parts. They also applied this principle to what they called "idea infringement," which is when someone uses a structural or conceptual pattern that is similar to a registered mark, even if they don't copy it word for word.

The judgment also gave concrete effect to the family of marks doctrine, holding that the appellant's sustained use of 'WOW' as a prefix across multiple food brands had created a protectable pattern in its own right. This article critically analyses these doctrines, probes the statutory foundations or lack thereof of 'idea infringement' as a distinct concept, and asks whether the decision strikes a defensible balance between brand protection and free competition. The outcome is mostly good, but the idea of "idea infringement" without a clear legal basis adds some uncertainty that future courts and Parliament may need to clear up.

Keywords: Trademark Infringement, Anti-Dissection Rule, Family of Marks, Idea Infringement, Composite Marks, Secondary Meaning, Consumer Confusion, Trade Marks Act 1999

I. INTRODUCTION

Can a word as common and cheerful as 'WOW' ever become someone's private trademark property? The instinctive answer, for many, would be no. And yet the Delhi High Court's Division Bench said otherwise carefully, and with considerable doctrinal support in *Wow! Momo Foods Pvt Ltd v Wow Burgers*.[1] The case raises questions that go well beyond the QSR industry. It asks us to think seriously about when a trader's consistent use of an ordinary expression crosses the threshold from mere commercial habit into legally enforceable brand identity.

Indian trademark law has always had to balance two important goals: protecting real business goodwill and making sure that everyone can use the language of business. The Trade Marks Act 1999 says that marks that are descriptive or laudatory at first cannot be registered. However, Section 32 says that these marks can be registered if they have gained a secondary meaning in the market through use. The judgment under review sits squarely at this intersection. 'WOW,' taken in isolation, is as laudatory as it gets an expression of delight that belongs to no one. But 'WOW! Momo,' 'WOW! Dimsums,' and 'WOW! Chinese,' taken together across a decade of nationwide use, may tell a different story.

The case also introduces something more novel. The Division Bench did not simply rule on whether 'WOW' had become distinctive. It went further, articulating what it termed 'idea infringement' the proposition that a defendant who copies the structural formula of a trademark family may be liable even without reproducing any single registered mark verbatim. This is arguably the judgment's most consequential contribution, and also its most legally contentious.

This article examines those contributions in five parts. Part II sets out the facts and the contrasting reasoning of the Single Judge and Division Bench. Part III analyses the anti-dissection rule and the doctrine of imperfect recollection as applied here. Part IV examines the family of marks doctrine and critically interrogates the 'idea infringement' concept. Part V considers broader implications. Part VI offers conclusions.

II. FACTUAL MATRIX AND JUDICIAL HISTORY

Wow! Momo Foods Pvt Ltd was founded in 2008 and has since grown into one of India's more recognisable QSR brands. Its outlets operate under marks including 'WOW! Momo,' 'WOW!

Dimsums,' and 'WOW! Chinese,' each combining the exclamatory prefix 'WOW' always with an exclamation mark with the name of a food category. The visual, aural, and commercial consistency of this formula across hundreds of outlets, packaging materials, and advertising campaigns is, by any measure, substantial.

In 2023, the appellant went to the Delhi High Court after finding out that the respondent had opened food stores called "WOW Burgers." Under Section 29 of the Trade Marks Act 19992, the suit claimed that the two marks were deceptively similar. It asked for both temporary and permanent injunctions because the respondent's mark was likely to confuse people who were already familiar with the appellant's brand family.

A. The Single Judge's Reasoning

The Single Judge declined to grant interim relief. Her reasoning rested on two propositions. First, 'WOW' is a common laudatory term that no trader can monopolise it belongs, in effect, to everyone who wants to invoke enthusiasm about their product. Second, the structural and visual differences between the marks different logos, different menus, different typefaces were sufficient, in her view, to rebut any real likelihood of confusion.[3] The analysis, as the Division Bench later found, suffered from a methodological flaw that distorted the outcome from the start.

B. The Division Bench's Reversal

The Division Bench took a different path. Rather than treating 'WOW' as an isolated element to be judged on its inherent distinctiveness, it looked at the marks as a whole and at the pattern that the marks, taken together, had created over years of use. It found the Single Judge's approach analytically flawed and granted the interim injunction. The doctrinal reasoning deserves close attention.

III. THE ANTI-DISSECTION RULE AND THE HOLISTIC CONSUMER STANDARD

The foundational error in the Single Judge's approach was that she effectively stripped 'WOW' out of its composite context and asked whether that word, standing alone, was distinctive enough to be protected. This is precisely the kind of fragmented analysis that the anti-dissection rule prohibits. The rule well settled in Indian law since at least *Cadila Healthcare Ltd v Cadila*

Pharmaceuticals Ltd[4] requires that a composite trademark be evaluated as a unified whole. What matters is the overall impression the mark creates in the minds of consumers, not the registrability or distinctiveness of any single component in isolation.

The Supreme Court's decisions in *Corn Products Refining Co v Shangrila Food Products Ltd*[5] and *Ruston & Hornsby Ltd v Zamindara Engineering Co*[6] had already embedded this principle firmly in Indian trademark doctrine. To extract 'WOW' from 'WOW! Momo' and then ask whether 'WOW' is inherently distinctive is to misread both the mark and the law. The composite mark 'WOW! Momo' is not merely the sum of its parts; it is a distinct commercial sign that has acquired its own identity in the marketplace.

Closely linked to the anti-dissection principle is the doctrine of imperfect recollection, which shapes the legal standard against which similarity must be assessed. The relevant consumer is not a trademark lawyer conducting a side-by-side comparison of competing marks. She is a person of average intelligence and ordinary commercial experience who may have seen one mark some time ago and now encounters another and who retains only a general, imperfect impression of the first.

The Supreme Court articulated this standard clearly in *Parle Products (P) Ltd v J P & Co*:[7] the question is whether the overall impression carried away by an ordinary consumer creates a real likelihood of confusion, not whether a careful observer with both marks in front of them would distinguish the two. In the QSR context where purchase decisions are often quick and brand associations are formed through repeated visual exposure rather than analytical scrutiny the 'WOW' prefix is precisely the kind of dominant, memorable element that such a consumer is likely to retain and reproduce when thinking about where to eat.

The Division Bench also rightly confined its analysis to legally relevant considerations. The Single Judge had placed some weight on differences in device logos and menu offerings. These factors may have a place in a passing-off action, which turns on the totality of the trade get-up. But infringement under Section 29 of the Act is mark-centric: the question is whether the marks, assessed as marks, are deceptively similar not whether the businesses, considered as businesses, are difficult to confuse. The Division Bench's exclusion of these irrelevant considerations was correct and important.

IV. FAMILY OF MARKS AND THE IDEA INFRINGEMENT DOCTRINE

A. The Family of Marks Doctrine: A Sound Application

The Division Bench recognised that the appellant had established what common law and comparative trademark jurisprudence describe as a 'family of marks' a series of marks sharing a structural common element which, through consistent use, becomes associated with a single commercial source.[8] McCarthy's authoritative treatment of the doctrine notes that a trader who consistently uses a common element across multiple marks acquires a protectable interest not just in each individual mark but in the pattern itself, such that a third party who adopts a mark conforming to the same pattern may be found to have infringed even if the specific mark has not previously been registered.[9]

The Delhi High Court has previously recognised the doctrine in S Oliver Bernd Freier GmbH v Vijay Khanna,[10] and its application here is, this author submits, broadly sound. The appellant's three registered marks share not just the word 'WOW' but a uniform structural formula exclamatory prefix followed by food category name. This is not coincidence; it is a deliberate brand architecture that, through sustained national exposure, has come to signal a particular commercial origin. A consumer who has repeatedly encountered 'WOW! Momo' and 'WOW! Dimsums' is, on the evidence, plausibly likely to associate 'WOW Burgers' with the same enterprise. The doctrine's application is analytically defensible.

There is also a statutory basis for this approach. According to Section 29(2)(b) of the Trade Marks Act 1999, it may be illegal to use a similar mark on comparable products or services if doing so is likely to cause confusion. Marks that were initially unregisterable under Section 9 but have since become distinctive through usage are protected by Section 32. When taken as a whole, these clauses align with the family of marks doctrine without the need for new legislation.

B. 'Idea Infringement': A Doctrinal Innovation in Need of Anchoring

The family of marks doctrine was not the end of the Division Bench's work. It even went so far as to discuss "idea infringement." According to this idea, a defendant may violate a registered trademark even if they do not fully utilize any of the plaintiff's

registered marks by utilizing the structural or conceptual model around which the plaintiff's brand is built. The court determined that "WOW Burgers" was flawed for more reasons than merely using the word "WOW." Additionally, it was flawed since it adopted the appellant's own naming methodology (exclamatory prefix + food category name).

This is a significant shift in doctrine that requires serious consideration. Similar to copyright law, trademark law has traditionally safeguarded specific signs, such as words, logos, and devices, rather than the concepts or structural norms that underlie them.

There is an intuitive logic to the court's reasoning. Where a competitor deliberately adopts not merely a component of another's mark but the very naming formula that makes the mark family recognisable, the injury to the registered proprietor may be real even if no single registered mark has been reproduced. The family of marks doctrine and Section 29(2) may not fully capture this harm if the competing mark is formally distinct from each individual registered mark. The 'idea infringement' concept tries to plug this gap.

This author respectfully submits, however, that the doctrine as formulated carries three serious risks that the court did not adequately address. First, it lacks statutory support. The Trade Marks Act 1999 defines infringement in terms of use of an identical or similar mark in relation to goods or services it says nothing about naming conventions, structural templates, or conceptual patterns. Judicial protection of abstract ideas through trademark law, without a legislative mandate, risks overreach. Second, the boundaries of the doctrine are undefined. How distinctive must a naming formula be before it attracts protection? How structurally proximate must the defendant's mark be before infringement is found? Without principled criteria, the doctrine risks giving well-resourced brand owners the ability to suppress legitimate commercial creativity on the basis of nothing more than structural resemblance to their own marks. Third, the doctrine does not sit comfortably with competition policy. Common exclamatory prefixes, naming conventions, and structural forms are part of the shared vocabulary of trade. Allowing these to be privatised through a doctrine of 'idea infringement' could, if extended beyond its present facts, impose significant barriers on new market entrants.

A more doctrinally cautious approach would have been to resolve the case entirely on the well-established foundations of anti-dissection, family of marks, and the broad construction of deceptive similarity under Section 29. The Court of Justice of the European Union's approach in Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV[12] recognising that where a dominant element creates the primary impression of a composite mark, similarity may be established even where other elements differ achieves comparable results without requiring a new and legally uncertain doctrine. That route was available here. The Division Bench did not take it, and Indian trademark law is now left with a novel concept whose scope and limits remain to be determined.

V. BROADER IMPLICATIONS AND ORIGINAL OBSERVATIONS

A. Secondary Meaning and the QSR Sector

One underappreciated dimension of the judgment is its confirmation that laudatory terms can acquire secondary meaning in fast-moving consumer markets. The Single Judge had effectively treated 'WOW' as permanently public property a word too common ever to be claimed. The Division Bench's analysis implicitly rejects this static view. Distinctiveness is not a fixed property of a word; it is a relationship between a word and a market, shaped by the intensity and consistency of commercial use over time. The appellant's decade of nationwide deployment of 'WOW' as a brand identifier had, on the evidence, transformed an everyday exclamation into a commercial signal and the law, the Division Bench rightly held, must recognise that transformation.

This has practical consequences beyond this specific dispute. QSR operators, FMCG companies, and consumer goods brands that have built consistent brand families around common words or phrases will find in this judgment a stronger foundation for their trademark portfolios. The implicit message is that sustained, uniform investment in a brand identity even one built on ordinary language can, over time, attract the full protection of the Trade Marks Act.

B. The Risk of Over-Protection and a Note on Competition

Notwithstanding the outcome's merits on the facts, there is a legitimate concern about the precedential reach of 'idea infringement' that the judgment does not address. India's

QSR industry is competitive and growing rapidly; it is also characterised by significant entry barriers for small operators who lack the resources of established chains. A doctrine that allows an incumbent to prevent competitors from using not just its marks but the structural pattern of its brand naming could, if applied broadly, entrench market dominance at the expense of genuine competition. The court would have done well to acknowledge this tension and to explicitly confine the doctrine's application to cases of demonstrated bad faith replication, or to cases where the structural pattern has acquired a genuinely distinctive commercial identity. The judgment's silence on these limiting principles is a notable omission.

C. Legislative Clarification as the Appropriate Next Step

The 'idea infringement' doctrine, as things stand, is judge-made and untethered to the text of the Trade Marks Act 1999. The Act's definitions, infringement provisions, and defences were not drafted with abstract structural patterns in mind. If the doctrine is to persist and there are good reasons to think it might, given the commercial realities it responds to it would benefit significantly from either legislative clarification or authoritative guidance from the Supreme Court. Comparative reference points exist: both the United States Patent and Trademark Office and the EUIPO have developed reasonably clear criteria for identifying dominant elements in composite marks, and for assessing when structural similarity in a mark family is probative of infringement. India could profitably draw on these frameworks.

VI. CONCLUSION

Wow! Momo Foods Pvt Ltd v Wow Burgers is, ultimately, a judgment that gets the right result by partially the wrong route. The outcome an interim injunction in favour of the appellant is well supported by the anti-dissection rule, the doctrine of imperfect recollection, and the family of marks doctrine, all of which the Division Bench applied with care and rigour. The correction of the Single Judge's fragmented analytical methodology was overdue and is to be welcomed.

Where the judgment overreaches or at least ventures into uncertain territory is in its articulation of 'idea infringement.' The concept captures a genuine commercial harm that conventional trademark doctrine struggles to address when a competitor replicates not a mark but a naming formula. But a harm being genuine does not automatically make its judicial remedy legally

sound. Without a statutory foundation, clear criteria for application, or explicit limits on its scope, 'idea infringement' introduces a significant dose of unpredictability into a body of law that brand owners, competitors, and their advisers need to be able to navigate with confidence.

The judgment will, one expects, be cited extensively in IP proceedings involving brand families and composite marks and rightly so, for its treatment of anti-dissection and family of marks is exemplary. The 'idea infringement' doctrine, by contrast, should be approached with caution until either the Supreme Court or Parliament brings it within a clearer legal framework. For now, it stands as an interesting doctrinal experiment: one that reflects the court's instinctive response to a genuinely novel form of commercial unfairness, but one that still needs the rigour of legislative or superior judicial definition to earn its place in the canon.

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ENDNOTES:

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2. Trade Marks Act 1999 (India), s 29.

3. Wow! Momo Foods (n 1), paras 20–22.

4. Cadila Healthcare Ltd v Cadila Pharmaceuticals Ltd (2001) 5 SCC 73 (SC of India).

5. Corn Products Refining Co v Shangrila Food Products Ltd, AIR 1960 SC 142 (SC of India).

6. Ruston & Hornsby Ltd v Zamindara Engineering Co, AIR 1970 SC 1649 (SC of India).

7. Parle Products (P) Ltd v J P & Co, AIR 1972 SC 1359 (SC of India).

8. J Thomas McCarthy, McCarthy on Trademarks and Unfair Competition (5th edn, Thomson Reuters 2023) § 23:61.

9. ibid.

10. S Oliver Bernd Freier GmbH & Co KG v Vijay Khanna, 2009 (39) PTC 400 (Del).

11. RG Anand v Delux Films, AIR 1978 SC 1613 (SC of India). The Supreme Court held that copyright protects the expression of an idea, not the idea itself a principle this article argues should inform the limits of any analogous doctrine in trademark law.

12. Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV (C-342/97) [1999] ECR I-3819, para 25 (CJEU).