

# IN THE HIGH COURT OF SINDH AT KARACHI

Miscellaneous Appeal No. 189 of 2025

Appellant : Through Mr. Ahmed Masood, Advocate alongwith M/s Shariq A. Razzak & Muhammad Altaf Advocates

Respondent : Through Mr. Muhammad Ali Lakhani, Advocate alongwith Mr. Mujtaba Sohail Raja, Advocate

Date of hearing : 02.01.2026

Date of announcement : 15.01.2026

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## O R D E R

**Syed Fiaz ul Hasan Shah, J.** Appellant has challenged Order dated 22.12.2025 (***impugned order***) in Suit No. 93/2025 passed by the learned Presiding Officer, Intellectual Property Tribunal (***Trial Court***) over dispute of intellectual property under the Trade Marks Ordinance, 2001 (**TMO**) whereby an application for grant of interim injunction was dismissed.

2. The facts of the case are that the appellant claims that he is involved in organizing Tape Ball Cricket Tournaments for last 9 years throughout Pakistan. It is further stated that first Tape Ball Cricket Tournament was organized in 2016 and since then it is continuing while different renowned companies including Pepsi, Coca-Cola, Osaka and Jazz etc sponsored the said tournaments. For distinction of the identity, appellant has adopted trademark “PTPL” (Pakistan Tape Ball Premiere League) and the said trademark and copyright of logo are registered with the Intellectual Property Organization of Pakistan vide Registration No.727040 in Class-41.

3. The Appellant further alleged that he has recently come to know that the respondent trading as “KTPL” (Karachi Tape Ball Premiere League) is also organizing Cricket Tournaments by falsely representing as “PTPL” and thereby causing legal injury to the appellant. According to the learned Counsel for the Appellant, the infringement is clearly and phonetically identical to the trademark of “PTPL” and thus violation has been committed by the Respondent and therefore, his injunction application must be granted to prevent future losses. Counsel for the appellant has invited attention to Page-127 of the Court file which is a Certificate of Registration of Trademark showing registration of “PTPL” (Pakistan Tape Ball Premiere League) in favor of appellant Humair Majeed under Registration No. 727040 in Class-41 and another one at Page-141 under Registration No. 713006 in Class-41 in favour of Arif Ahmed. According to learned counsel for the appellant, the rights have been obtained by the appellant from the said Arif Ahmed under Assignment Deed, therefore, the respondent is not entitled to use the word “PTPL” (Pakistan Tape Ball Premiere League). Learned counsel further stated that Annexure A/3 and other similar photographs attached with the Appeal which are taken at different events organized by the Respondent which clearly shows that the Respondent is using the term “KTPL” (Karachi Tape Ball Premiere League), therefore, clear violation of infringement of rights of registered trademark has been established from the document of the respondent as well as admission have also made at paragraph 7 of the Written statement filed by the respondent before the Trial Court that four successful seasons of “KTPL” (Karachi Tape Ball Premiere League) have been organized by the respondent and said Respondent has now suddenly started using words PTPL instead of word “KTPL” (Karachi Tape Ball Premiere League). Due to such infringement, the appellant has also published an advertisement in daily Dawn dated 31.10.2025 disseminating that “PTPL” (Pakistan Tape Ball Premiere League) is legal ownership of the

appellant. Lastly learned counsel contends that earlier Suit No. 02/2024 was filed by the respondent against the appellant and others which was withdrawn unconditionally after dismissal of his stay application in that suit. He placed reliance upon case law (1) PLD 1973 Karachi 567, (2) PLD 1990 SC 313, (3) 2007 CLD 1181, 2013 CLD 2087, 2001 CLD 1368, 2016 MLD 389, 2022 SCMR 979 and 1981 SCMR 1039.

4. Learned counsel for the respondent at the very outset has not disputed the said Certificate of Registration issued by the Registrar, Intellectual Property Organization of Pakistan in favor of the appellant under the name and style of “PTPL” (Pakistan Tape Ball Premiere League). Conversely, argued that the trademark which is claimed by the appellant comprises “generic” term which is lacking nobility and distinction. He submits that laws of the Intellectual Property Organization of Pakistan signify that its aim and object is primarily to remove the confusion. Section 39(1)(2) infringement conditions cannot apply to generic form, word or expression according to the definition of Section 2(xlvii) of TMO, and it can be used by anyone. He admitted that collectively he has no right with the registered logo which is absolutely belong to the appellant and the Respondent is not regulating the same. He further argued that Section 17 of Repeated Act, 1940 as well as Section 2(xlvii) of the operative law clearly provides that generic word cannot be registered and legislatures have freed such words for the use by everyone and that disposition stated by Section 17 TMO discourages the registration of a trademark which may propagate the confusion for the end-consumer and according to the whole scheme of law no exclusive or absolute right can be claimed by the appellant on “PTPL” (Pakistan Tape Ball Premiere League), therefore, the respondent has filed revocation before the Registrar, Intellectual Property Organization of Pakistan. It is further stated that the rights under the registered trademark with regard to

the alphabet words are not exclusive in view of the disclaimers note available in the certificate itself. The appellant was not entitled to interfere with the business activities of the respondent including usage of word “PTPL” (Pakistan Tape Ball Premiere League) which are generic term and has been using by the respondent under different logo, therefore, there is no resemblance at first impression as shown by the appellant. He makes reliance upon case law (1) 2002 CLD 1963, (2) 2011 CLD 193, (3) 2005 CLD 10, (4) 2016 MLD 389, (5) 2021 CLD 362 and (6) 2011 CLD 193.

5. Heard the counsel for the parties and with their assistance carefully examined the record.
6. It appears that the appellant filed an application for interim injunction, while the respondent moved an application under Order VII Rule 11, C.P.C. The learned Trial Court, through the impugned order, dismissed both applications. The present appeal has been preferred by the appellant to the extent of dismissal of his application for injunctive reliefs. It is noted that there is no dispute between the parties regarding the issuance of a Certificate of Registration in favor of the appellant for his logo coupled with the expression “PTPL” (Pakistan Tape Ball Premiere League). However, such registration is not absolute, as it lacks the requisite disclaimer in respect of descriptive and non-distinctive elements. The Certificate of Registration is available at Page-127 with disclaimer as under:

*“Registration of the trademark shall give no right to the exclusive use of letters “P,T,P and L” separately and apart from the mark as a whole and all other descriptive words appearing on”*

7. The purpose of the disclaimer requirement under trademark law is to delineate the scope of rights conferred upon the proprietor of a registered mark and to minimize extravagant or unauthorized claims arising from registration. While disclaimers may not entirely eliminate such claims, they serve to ensure that

certain categories of terms—such as generic, descriptive, geographic, or commonly used symbols like the dollar sign (\$)—remain outside the ambit of exclusive protection.

8. Even deceptively mis-descriptive terms—those that inaccurately but credibly describe a product or service, such as “riverfront restaurant” for a non-riverfront establishment—require disclaimers to prevent unfair exclusivity. Collectively, these categories safeguard the accessibility of essential descriptive, generic, and informational language in commerce. Disclaimers also extend to misspelled words, foreign terms, compound expressions, and unitary wording, ensuring that no party unjustly appropriates common linguistic elements for branding. It is a settled principle that a purely generic expression can never be granted registration or protection as a trademark. Illustrative examples include:

- a. **STARBUCKS COFFEE** – “coffee” is generic and not exclusively protectable.
- b. **KIA MOTORS** – “motors” is generic and freely usable.
- c. **BURGER KING** – “burger” is generic and cannot be monopolized.
- d. **CRAZY ED’S FURNITURE** – “furniture” is generic and remains public domain.
- e. **DOMINO’S PIZZA** – “pizza” is generic and available to all traders.
- f. **MICROSOFT CORPORATION** – “corporation” is generic as a business designation.

9. Judicial precedents reinforce this principle. In *M. Sikandar Sultan v. Masih Ahmed Shaikh (2003 CLD 26)*, it was held that the exclusive right to use a trademark in relation to registered goods is infringed where any person, not being the proprietor or a registered user, employs a mark identical with or so nearly resembling it as to likely deceive or cause confusion in the course of trade. In *Jamia Industries v. Caltex Oil (Pvt) Ltd. (PLD 1984 SC 8)*, a Full

Bench of the Hon'ble Supreme Court emphasized that striking similarities exposing an unwary purchaser to confusion and deception warrant stricter application of the infringement test, particularly in cases of passing off. Similarly, in ***Mehran Ghee Mills v. Chiltan Ghee Mills (2001 SCMR 967)***, the Court held that deceptive similarity must be assessed by the overall commercial impression upon the average consumer of imperfect recollection, rather than by dissecting individual components. In ***Burney's Industrial & Commercial Co. Ltd. v. Rehman Match Works (PLD 1983 Karachi 357)***, it was observed that even where marks are not identical, resemblance sufficient to likely deceive or cause confusion in trade is actionable, especially given the socio-economic conditions in Pakistan. Courts in India have also addressed the issue. In ***Nestle's Products (India) Ltd. v. P. Thankaraja (1977 SCC OnLine Mad 72)***, registration of "INSTEA" was refused as it unjustly monopolized the generic description "instant tea." In ***Healthcare Ltd. v. Gujarat Co-operative Milk Marketing Federation Ltd. (2009 (41) PTC 336 (Del.) (DB))***, the Delhi High Court held that generic terms may only be protected if they acquire distinctiveness or well-known status. Likewise, in ***Jain Riceland (P) Ltd. v. Sagar Overseas (CS(COMM) 796/2016)***, the Court categorically held that generic words cannot acquire distinctiveness sufficient for trademark protection.

10. It is a settled principle that registration confers exclusive rights only in respect of the trademark as registered, not over its individual generic or descriptive components. Traders cannot claim monopoly over words or expressions common to trade or descriptive in nature, as such words belong to the public domain. This principle is embodied in Sections 14 and 21 of the TMO. While rights arise under Section 39, infringement under Section 40 must be assessed by comparing marks as a whole. **Section 42(3) of the Ordinance** codifies the doctrine that use of a disclaimed or generic part per se does not amount to

infringement. This reflects the common-law position in *Office Cleaning Services Ltd. v. Westminster Window & General Cleaners Ltd. (1946 1 ALL ER 320)*, where it was held that descriptive words, even when part of a registered mark, cannot be monopolized and may be honestly used in trade.

11. However, disclaimers do not provide immunity where the defendant's mark, viewed in totality, appropriates the distinctive character of the registered mark. Therefore, use of a generic or disclaimed word alone does not constitute infringement under the Ordinance. Where the impugned mark, taken as a whole, is identical or deceptively similar to the registered mark and likely to cause confusion, the existence of a disclaimer does not bar an infringement action. Mere use of the disclaimed generic word by the Respondent does not violate Sections 39 or 40 but as a whole is a distinct trademark when it is caused confusion as held in *Messrs Montgomery Flour and General Mills Ltd. v. Registrar Trade Marks (PLD 1973 Karachi 567)* upheld by Hon'ble Supreme Court reported as PLD 1990 SC 313 that "7" & "up" contains disclaimer being general words but as a whole is a distinct trademark and violation can be terms as infringement of rights and same view held in other cases relied upon by the learned Counsel for the Appellant such as 2007 CLD 1181, 2013 CLD 2087 and 2016 MLD 389.

12. The infringement contemplated under Sections 39 and 40 TMO arises only where the impugned use is of a registered trademark, or of a mark identical with or deceptively similar thereto, employed in the course of trade so as to cause a likelihood of confusion. In the present matter, the Appellant's registration pertains to a logo accompanied by the expression *PTPL – Pakistan Tape-Ball Premiere League*, horizontally and separately inscribed with the logo. The Respondent, however, has adopted the same alphabetical words *PTPL – Pakistan Tape-Ball Premiere League*, but in conjunction with the

additional phrase *Street to Stadium*, arranged in a circular device with a distinct color scheme and background.

13. In the parlance of trademark law, *deceptive similarity* denotes such resemblance between marks—whether in name, logo, or device—that the public is likely to be misled into believing that the goods or services emanate from the same source. The test is applied from the standpoint of the average consumer, assessing similarity in visual impression, phonetic sound, and conceptual association. Where such similarity exists, it imperils the goodwill of the registered proprietor and creates a real possibility of consumer confusion. It is settled law that alphabetical words and descriptive terms may, in appropriate circumstances, constitute deceptive similarity if their use is likely to deceive or cause confusion in the minds of consumers. However, such determination must be made case by case, upon consideration of the overall impression of the marks, rather than minor differences in spelling, style, size shape, fascia or presentation. At the same time, words that are *publici juris*—being common to trade or descriptive in nature—are incapable of exclusive appropriate ownership. The law does not permit proprietors of logo or device marks to dissect their registrations and claim monopoly over individual descriptive components thereof. In the absence of deceptive similarity between the marks in their entirety, no infringement is made out. Courts consistently refuse protection to prevent monopolies over everyday descriptors such as “Apple” for fruit.

14. The expression *PTPL – Pakistan Tape-Ball Premiere League* is generic in nature and remains available for use by the public at large. The appellant’s certificate itself contains a disclaimer, which serves as a reminder that such generic elements or words are not exclusive to the appellant. Section 40 of the Ordinance operates as a **statutory limitation** upon the effect of registration and

expressly protects bona fide use of indications concerning kind, quality, quantity, purpose, or characteristics of goods or services. Where the words complained of are **generic or descriptive**, and are used honestly and descriptively rather than as a badge of origin, the provision bars any claim of infringement.

15. In determining the existence of a likelihood of confusion, courts are guided by the test, which is a multi-factored inquiry. The relevant considerations include:

- (i) the similarity of the marks in issue; (ii) the strength and distinctiveness of the plaintiff's mark; (iii) the degree of sophistication exercised by consumers in making purchasing decisions; (iv) the intent of the defendant in adopting the impugned mark; (v) the presence or absence of evidence of actual confusion; (vi) the similarity of the parties' marketing and advertising channels; (vii) the extent to which the parties direct their sales efforts to the same consumer base; (viii) the similarity of the products in terms of identity, function, and use; and (ix) other circumstances suggesting that consumers might reasonably expect the prior owner to manufacture both products, to enter into the Respondent/defendant's market, or to expand its business into the Respondent/defendant's line of trade. These factors are not to be applied mechanically, but rather holistically, with the overarching objective of assessing whether the ordinary consumer is likely to be misled as to the source or origin of the goods or services. Apparently, the Appellant has failed to place any substantial material before the learned Trial Court along with his injunction application to apply the guided tests in support of his claim of deceptive similarity and confusion as held by the Division Bench of this Court in H.C.A. No. 269 of 2014 (Hamdard Laboratories (Waqf) Pakistan v. Mohammad Fahim), wherein reliance was placed upon English jurisprudence, notably the "Moron in a Hurry" test and the Lapp test, arising out of Morning Star

Cooperative Society v. Express Newspapers Limited (1979 FSR 113) and Interpace Corp. v. Lapp, Inc., 721 F.2d 460 (3d Cir. 1983), respectively.

16. The only reliance placed is upon a registration certificate obtained in 2016, which seeks to attack generic words and expressions that too having inherent disclaimer attached thereto and a revocation proceeding is also pending before the Registrar of Trade Marks, Karachi as have been informed by the Counsels. Accordingly, the golden principles governing the grant of injunction are lacking and no *prima facie* case has been demonstrated, no irreparable loss has been established, and the balance of convenience does not favor the Appellant. The principle enunciated by the Division Bench in Soneri Travel and Tours Ltd. v. Soneri Bank Limited (2011 CLD 193) that the Court must exercise caution in granting injunctive relief, as such an order may effectively restrain a company from using its name and, in substance, amount to shutting down its business fully attracted. It follows that interim injunctive relief in such cases must be granted with great care and circumspection, and only where a clear and *prima facie* case of infringement of the Appellant's or Plaintiff's rights is established.

17. The impugned Order passed by the learned Trial Court does not warrant any interference. Accordingly, the instant Miscellaneous Appeal stands dismissed. Nevertheless, it is observed that the Appellant shall remain at liberty to move an injunction application before the Trial Court on fresh grounds, whereupon the learned Trial Court shall apply the Lapp Test in the manner delineated hereinabove.

18. It may further be observed that any observation recorded in the order are only for the purposes of deciding present appeal and shall not affect the merits of the case which shall be decided by the trial Court after recording the evidence.

**J U D G E**