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The legacy of Cadila Healthcare Ltd v Cadila Pharmaceuticals Ltd: considering the foundations of the similarity doctrine in Indian trademark jurisprudence

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*E.I.P.R. 800 Abstract

The legacy of the Indian Supreme Court's 2001 decision in Cadila Healthcare Ltd v Cadila Pharmaceuticals Ltd *is well established, often remembered as a landmark judgment whose principal contribution was a seven-factor test that defined the parameters of the similarity doctrine in Indian trademark law. This article argues, however, that the legacy of Cadila cannot be confined to this characterisation. Instead, it demonstrates that the decision is representative of the development of a distinctly Indian strain of common law thought. Situating the decision within the longer common law genealogy of the similarity doctrine in trademark jurisprudence, it traces the development of the doctrine from the medieval English merchant down to modern tests, demonstrating that through Cadila's reformulation of the similarity inquiry, Indian courts have transformed a largely imperialist legal system into one attentive and responsive to Indian conditions. Cadila illustrates how a transplanted common law doctrine can be judicially localised, without abandoning its core conceptual function therefore providing evidence of the indigenisation of the common law legal system, contributing to the larger debates on legal transplants, postcolonial legal development, and the continuing evolution of common law.*

Introduction

In 1266, the Plantagenet king Henry III,[1] set up the *Assissa Panis et Cervisiae* or the Assizes of Bread and Ale.[2] This medieval court, closely following the foundational Magna Carta[3] and the Provisions of Oxford[4] signified a changing tide in English society.[5] Alongside the Assizes, new legislation was introduced named the Baker's Marking Law of 1266 (Marking Law). The Assizes closely monitored the rising trend amongst bakers at the time for bread fraud or the dishonest practice of selling underweight loaves of bread, and the Marking Law required bakers to brand their loaves with a distinctive mark belonging only to them to prevent misrepresentation.[6]

The relationship between common law and trademarks began with bread; humble, elementary and essential for survival. While boiled cereal- such as oatmeal pottage-was a popular method of consumption, it was ***E.I.P.R. 801*** still supplemental[7] and bread is a clearly demonstrated preference, central to medieval diet and economy.[8] It could start riots and, indeed, civil war.[9] Bread was heavily regulated by the state and its quality and fair pricing independent of grain prices (which was often influenced by the crop yield that year) was keenly monitored, thus illustrating consumer protection as a strongly entrenched common law priority.[10]

Is this common law principle, which is so close to English society, capable of transformation? In the past five hundred years, the common law system has travelled the globe, uprooting indigenous law in "terra nullius", and establishing itself as legal authority. Its transplantation has been the subject of considerable scholastic commentary. Yet, what can be observed from the example of bread marks as a symbol of a common law priority, is that the common law legal system has an intrinsic, symbiotic relationship with the society it subsists in. As a foreign legal system, it perhaps can be construed as intrusive if indiscriminately borrowed from, but it is not an isolated influence. In India, as Bulkan has suggested for other lands,[11] an indigenous renaissance has arisen, melding almost imperceptibly with common law to form a uniquely localised common law tradition.

This article examines the landmark Indian trademark judgment of Cadila Healthcare Ltd v Cadila Pharmaceuticals Ltd, as a method to answer the question: is current legal thought in trademark jurisprudence still reflective and imitative of common law? Cadila examined the integral doctrine of similarity, a concept whose roots may well be traced to the original underpinnings of trademark law in medieval times; the need for distinguishing sources. This paper further answers the questions: (i) does the concept of similarity in today's world hinge upon simply preventing visual similarity between marks to establish source? (ii) what impact does the Indian ecosystem have upon its understanding of the similarity doctrine? And (iii) are the gleaned principles from Cadila sector agnostic or has it fortified an Indian court's understanding of similarity completely? Rather than treating Cadila as an isolated doctrinal landmark, this paper situates the decision within the longer common-law genealogy of trademark similarity jurisprudence.

While Cadila remains firmly situated within the inherited common-law tradition of trademark similarity, it substantially modifies that tradition by reorienting the similarity inquiry around Indian linguistic conditions, consumer realities and public-health concerns. In doing so, Cadila demonstrates not the rejection of common law but its localisation to India. To do so, this paper examines in its first part the relationship between common law and the colonies, trademarks, and specifically the similarity doctrine. In its second part it examines the Cadila judgment in detail, paying consideration to the development and usage of the doctrine within the judgement and the bounds of its usage, all the while attempting to measure the distance, if any, from the common law understanding of similarity.

1. Swan marks and the indica of ownership of a mark: common law origins of similarity

What is the significance of the common law in countries touched by Empire?[12] Much like colonial rule itself, common law systems were an imposition[13] that often-replaced indigenous legal systems.[14] Whether the common law system served the jurisdictions upon which it was imposed, is a consideration for many scholars. In trademark jurisprudence, the development of the similarity doctrine is traceable in precedent. This section examines the relationship and influence of the common law on the trademark legal systems of erstwhile colonies while examining early similarity doctrine cases as a precursor to Cadila, thereby setting the scene for its contribution to Indian similarity doctrine.

1.1 Common law and the colonies

Marks, today, encompass more than just an identifying function[15] as was used in medieval times to identify individual bakers. They have evolved into entities that are transactional, able to be licensed, and carry valuation as a separate company asset—a valuation that can spring into the billions. The evolution of a trademark from a source-identifying tool to a robust and flexible legal tool despite limitations such as the functionality doctrine is ***E.I.P.R. 802*** because the scope of trademark jurisprudence has consistently been widening.[16] For instance, while ontological origins of the trademark concept certainly lie in source-identification, the purpose of consumer protection also furthers the prevention of unfair competition. Common law understands source-identification as a method of preventing unfair competition.[17] It is also necessary to protect sellers as the concept of *lucrum pistoris* that compensated bakers illustrated; scholars recognise that the need for trademark protection is also to prevent free-riding on goodwill.[18] This evolution illustrates adaptability of the common law tradition.

Another instance of the common legal system's adaptability is its transplantation into Britain's erstwhile colonies, as a replacement for indigenous legal systems,[19] codification efforts[20] were bent towards common law concepts although codifiers also attempted to borrow from Continental law.[21] The transplantation of English common law into colonial India therefore raises a further question: did trademark doctrine evolve with Indian conditions in the same manner that it evolved within England itself? Levi describes common law as a moving system of classification[22] contingent not on rules, rather, upon what a future judge relies upon as the ratio of a case.[23] Indian judges return to and draw upon common law principles almost instinctively. So entrenched is the common law consciousness in Indian jurisprudence, that India is still considered a common law country.[24] Some areas of law still distinctly hold the flavour of English common law, such as Indian contract law.[25] Is Indian trademark law, too, a retention of English common law, "warts and all?"[26]

Singh and Kumar argue that the common law system is at a distance from Indian society.[27] No reference was made to traditional, indigenous systems when these laws were being consolidated in

the nineteenth century.[28] As is usually touted by "flatulent"[29] voices in support of imperialism, the Empire bestowed upon colonies many modern conveniences such as the railways, boarding schools, post offices, and telephone and telegram lines. These conveniences were structured primarily to facilitate imperial presence and to serve European societies in India, rather than Indian society itself.[30] Halpérin opines that India appears as an "extraordinary laboratory for the study of transplants",[31] if the transplantation of Portuguese laws, French laws, the borrowing of techniques from civil law tradition in the codification of the Indian Penal Code (IPC), is taken into consideration. The codifier of the IPC, James Fitzjames Stephen, unwittingly supports the claim earlier made that common law amongst other supposed benefits of colonial presence in India legislation was made for the colonisers rather than the colonised, from his prejudicial opinion that "our (sic) law is the sum and substance of what we have to teach them."[32] Indeed, as an antecedent to Stephen's claims of benevolence, it is notable that the 1661 Charter of Madras established what Halpérin calls the "first feature of English law",[33] a combination of the association of the Magna Carta with the international legal principle of lex patriae, that English law applied to English subjects, even if its application was extra-territorial. It is not an overbroad claim, then, that the transplantation of common law was a convenience meant for English subjects.[34]

There is no question that India is a common law country.[35] Stripped of any previous identity,[36] it was reshaped into one. In the Hamlyn Lectures, Setalvad described the effect of common law in India. Referring to the legacy of the English common law which he stated began in the 17th century with "its application to British subjects in small areas in certain parts of India which were known as the Company's factories… has deeply ***E.I.P.R. 803*** coloured and influenced the laws and the system of judicial administration of a whole sub-continent."[37] The impress of common law upon what Setalvad refers to as the Indo-British system, is so deep, "resembling the height, the symmetry and the grandeur of the common and statute law of England."[38]

Galanter states that the transplantation of the English legal system was not static: when law is borrowed, it is inevitably refined to distil the "localisms of its original historical embodiment."[39] In this manner, Galanter describes the common law system as being "stripped of technicalities and historical anomalies and rendered symmetrical and orderly."[40] The Indo-British system is distinctly Indian, "an admixture with an autochthonous background,"[41] creating the understanding that there is a distinct Indian tint to modern common law in India. This can be seen in India's acceptance, retention, and amendments of the inherited body of laws it received upon independence. It is also illustrated in the lack (and arguable reluctance to expend efforts in this area) of codification of the vast body of common law.[42]

1.2 Common law and the trademark

In transplanting a naturally English concept into a distinctly Indian background, Macaulay, in his codification of criminal law, included in his penal code a provision[43] that prohibited the usage of another's property mark, in a section that dealt with the misuse of movable property.

English trademark law hinges on the concept of property, where a property right is created within a distinguishing mark. Certainly, it was not originally meant to be a separate entity from the product that bore it as a mark, rather the mark indicated the product's origin.[44] The swan mark, one of the oldest functioning property rights,[45] illustrates this concept particularly well. Swans were a mark of gentility, nobility, and indeed royalty. Schecter notes with reference to Yarell's work on the *History of English Birds*,[46] that in English legal theory, there is no bird quite like the swan, the "bird royal" in which "no subject can have property when at large in a public river or creek, except by grant from the crown… in according this privilege the crown grants a swan mark."[47] The swan mark or *cigninota* was a mark made on the bird itself, similar perhaps to branding cattle. Swan marks were registered with the king's swanherd and he "was bound to keep a book of swan marks and no new marks were permitted to interfere with the old ones."[48] It would be incorrect to suggest that the *cigninota* itself was property; the swan was the property, and the mark was a protection against fraud. Trademarks, as was stated by Lord Westbury in an 1863 Chancery Court case,[49] were tools to prevent fraud. When a *cigninota* was duplicated, it was treated by courts of law as a deceit perpetrated upon the owner of the trademark. Although these early marks primarily denoted ownership rather than commercial goodwill, they established the central common-law idea that a mark distinguished one proprietor's goods from another's. The later doctrine of similarity would build upon this foundational source-identifying function.

Trademarks are property, and the jurisdiction of the Court in the matter of trademark protection "rests upon property, because that is the only mode by which property of this description can be effectually

protected."[50] At equity, trademark protection is still based on fraud, but the fraud involves deceiving consumers by exploiting the goodwill created by the trademark owner as was seen in Croft v Day.[51] McKenna notes that availability of equity in early cases of trademark protection enabled the trademark owner the trademark owner's ability to establish their ownership or title to mark by showing substantial and exclusive use of the mark;[52] a feature of trademark law that remains significant today. This use showed that "the defendant had no legitimate reason to use the same mark."[53]

The nature of the mark and the relationship between a mark and the one to whom it belongs have evolved over centuries in common law spheres.[54] In medieval times, marks were statutorily compulsory for craftsmen as marks of guild standards of production and individual products' reputations for excellence, thereby making the trademark a regulatory mark of origin and not a mark of quality or an asset.[55] With clothiers or traders, the mark signified ***E.I.P.R. 804*** quality, hence illustrating that marks had evolved beyond their earlier role as liabilities.[56] The link between these landmark events in trademark legal history lies with the cutlers' marks, as in and by themselves they cannot be seen as the foundation of the modern trademark.

Cutlery was an ancient and highly regarded craft, again connected to sustenance, and a significant dispute arose in 1452 concerning the Double Crescent. A certain Robert Hynkeley, a bladesmith and London citizen, used the Double Crescent until he died in 1450.[57] In 1452, the mayor granted approval to Hynkeley's widow and another, but also expressly banned another bladesmith, John Morth, from using the mark.[58] Schechter believes that the litigation that arose from the cutler's mark and the subsequent granting of the mark to the widow—"even unto her remarriage"—who continued trade under that *marquam suam pristinam*, displays the value that marks had started to accumulate for themselves.[59] Thus, the journey from a compulsory, policed merchant mark to a mark that could be considered property in its own right—an asset no less—was made.

These developments reveal that trademark jurisprudence in common law was already evolving from its origins as proprietary interests into nascent legal devices performing distinct commercial functions. The swan marks first established the principle that a mark distinguished one proprietor's goods from another's. Guild and merchant marks further expanded this function by guaranteeing authenticity and signalling compliance with recognised standards of production. As marks gradually acquired independent commercial value, common law came to protect them not simply as property but as embodiments of commercial identity and accumulated goodwill. This shift inevitably altered the legal significance of imitation. What had once been viewed as a fraud upon the proprietor increasingly became a fraud upon the consuming public, giving rise to the equitable action for passing off. The protection of trademarks thus evolved from safeguarding ownership to preventing consumer deception, establishing confusion between competing marks as a legally actionable harm. These developments collectively formed the conceptual foundations from which the modern doctrine of trademark similarity would later emerge.

1.3 Common law and the origins of similarity

Is mere misrepresentation as would commonly occur in a passing-off action adequate for the standard required for a registered trademark infringement? Misrepresentation undermines the consumer-protection function of trademarks and is a fraud perpetrated on the consumer. It is pertinent to mention here, the intrinsic relationship between unfair competition and trademark law. Early common-law jurisprudence drew little distinction between the two, treating both as concepts of commercial morality, subject to legislation on fraud. Between the two understanding both as concepts of commercial morality, subject to legislation on fraud. Misrepresentation is about truth, and no adulteration can be tolerated.[60] In modern trademark law, mere misrepresentation is insufficient to establish infringement. Ingredients required to establish infringement are a mark that is identical or so deceptively similar to an existing registered trademark so that the likelihood of confusion between the two marks is greatly increased. There certainly are nuances to this highly simplistic description of modern infringement such as the audience of the confusion, the popularity of the mark, and the variety of marks that products can now bear.

Similarity, however, has been the main manner by which mark owners could infringe upon another's mark rather than an identical reproduction. Similarity is perhaps more prevalent, whether consciously or unconsciously done as even veering too close to another's mark could result in infringement. Indeed, as some courts have pointed out, a bumbling and foolish identical reproduction would be the least successful form of confusion:

"Of course, few would be stupid enough to make exact copies of another's mark or symbol. It has

been well said that the most successful form of copying is to employ enough points of similarity to confuse the public with enough points of difference to confuse the courts."[61]

What, then, is the nexus of similarity? Journeying back to the central, historically typical common law element of fraud in the action of passing off, confusion between two marks can lead to deceiving consumers. Another common law concept that is central to the aspect of similarity is the idea that trademarks are a source identifier. This requires shifting perspective from the consumer protection feature of the trademark to the innate nature of the mark as property. In Candee, Swan & Co v Deere & Co,[62] the Supreme Court of Illinois remarked that trademarks can be compared to the branding of livestock:

"The object of the one is to distinguish the property bearing it from another... A trade-mark (sic) denotes the origin of the article. No one man can have more than one mark or brand, and it is required to be recorded. If the owner could have more than one mark by which to distinguish his property, great confusion and uncertainty would be produced to ***E.I.P.R. 805*** such an extent as to defeat the object in view. We have found no case where a proprietor has claimed more than one trade-mark (sic) …"

This 1870 American case illustrates early underpinnings of modern trademark legal thought at common law that has endured well. In a landmark case as recent as 2003, the European Court of Justice also held that the primary function of trademarks was that of a source identifier.[63] Therefore, those with deceptively similar marks to a senior mark would confuse consumers to the point of detraction of sales belonging to the senior mark.[64]

While many scholars[65] prominently Schechter note that the oft quoted case of Southern v How,[66] wherein a clothier brought action against another clothier for using his mark on "ill-made cloth on purpose to receive him",[67] was unfortunately not the starting point of similarity and consumer confusion in modern trademark law as many imagine it to be, it has presented itself as somewhat a dictum of deceit at common law. Popham's Report[68] states that,

"an action upon the case was brought in the Common Pleas by a clothier, that whereas he had gained great reputation for his making of his cloth, by reason whereof he had great utterance to his great benefit and profit, and that he used to set his mark to his cloth, whereby it should be known to be his cloth: and another clothier perceiving it, used the same mark to his ill-made cloth on purpose to deceive him, and it was resolved that the action did well lie."[69]

Schechter, on the contrary states that from reports such as 22 Elizabeth,[70] it is an irrelevant reminiscence of a judge that has taken on the garb of a landmark judgement[71] and indeed the beginning of an important common law concept-which is after all, judge-made law. It is not a reliable link, rather a very fragile[72] one of nascent merchant mark protection in the Middle Ages to the beginnings of modern trademark law. What can be reliably gleaned from the failed example of Southern, though, is that the Tudors and the Stuarts in their attempts to organise internal and external trade were eager to repress and regulate commercial frauds such as trademark infringement.[73]

1.4 Similarity of trademark regimes across common law-an accident?

Does Southern present as the beginning of trademark law in India and other erstwhile colonies, especially as the precedent for the modern understanding of similarity, confusion, and deceit? While it may be one among many like Sykes v Sykes,[74] Blanchard v Hill,[75] and the recently rediscovered Robinson and Roberts v Wheble,[76] it is certainly not effective on modern Indian trademark law as a singularity. Registered trademark law in India was conceptualised in the early 20th century and the colonial Trademarks Act 1940 was passed. After Indian independence, and in 1958, subsequent to the report of Justice N. Rajagopala Ayyangar (Ayyangar Committee Report 1955), the Trademarks and Merchandising Act, 1958 was enacted. The Ayyangar Committee Report[77] on Trademarks Law Revision, 1955, was made with great consideration of other common law countries such as Canada, the United States of America, the United Kingdom (UK), and Australia. Of all other countries, heavy reliance is placed upon the development of law and statute in Australia. In 1905, Australia enacted the Trademarks Act 1905, which was not an original statute by any means, rather a direct import from English principles. In 1955, a revised trademarks legislation was enacted which was foundational for the modern trademarks' regime in Australia.

From the Ayyangar Committee Report, it is clear that similar review processes were employed. Justice Ayyangar notes,

"In addition to these materials I have derived considerable advantage by a close reading of the reports of the Dean and Knowles Committees which considered the desirable alterations in the Trade Marks (sic) law of the Australian Commonwealth and I am greatly indebted to Mr. Wilmot, Commissioner of Patents, Australia who so readily acceded to my request and sent me copies of these reports together with the draft of the Australian Act ***E.I.P.R. 806*** whose adoption the Committee recommended. In the paragraphs that follow my reference to the report of the Australian Committee is a reference to the report of the Dean Committee and my reference to the Australian Act is a reference to the bill as formulated by this Committee which Mr. Wilmot in his letter to me has stated, was adopted by the Australian Legislature practically in that form."[78]

The branch of law that this article considers, then, is borne of common law, can be defined as common law, in that, it is characteristically precedential, and can even be said to have originated from distinctly English concepts. The foregoing discussion reveals that the inherited common-law similarity doctrine rested upon several enduring assumptions. First, trademarks functioned primarily as indicators of source. Secondly, deceptive similarity was understood principally through the prevention of fraud and consumer confusion. Thirdly, similarity was assessed holistically rather than mechanically. Finally, the doctrine developed within English linguistic and commercial conditions. It is against this inherited template that Cadila must be understood. Part Two of this article argues that English legal transplantation now has a distinct Indian hue to it, making it volksrecht- the people's law—with volksgeist—the spirit of the people.

2. The deception of unusually stupid people

Illustrated by the previous part, English common law can be understood as the inception of the conceptual beginnings of trademark jurisprudence. The similarity doctrine is a concept at the heart of English common law, prioritising values such as consumer protection and prevention of unfair competition. This part asks, how far has Indian trademark jurisprudence travelled from this stance? What values are now prioritised? The overarching purpose of this section is to understand whether India, as a common law country, now has developed a distinctly Indian common law practice. This part closely examines the standards of similarity—namely its seven factor test—set in Cadila Healthcare v Cadila Pharmaceuticals,[79] their origin, their durability, and their relationship with antediluvian common law.

2.1 Before cadila: tests for similarity

In an early twentieth century case, Crooks' Trademark,[80] which has been cited in both Indian and Australian jurisprudence, Romer J was quoted as saying that an admission of a mark cannot be barred because unusually stupid people, fools, or idiots may be deceived. In 1937, the High Court of Australia in Australian Woollen Mills Ltd v F S Walton & Co Ltd,[81] drew on Romer J's standard in Crook's, while devising a test for deception or confusion amongst similar marks:

"The usual manner in which **ordinary people** behave must be the test of what confusion or deception may be expected. Potential buyers of goods are not to be credited with any high perception or habitual caution. On the other hand, exceptional carelessness or stupidity may be disregarded. The course of business and the way in which the particular class of goods are sold gives, it may be said, the setting, and the habits and observation of men (sic) considered in the mass affords the standard." [82]

(emphasis added)

The reasonable man standard in cases of negligence hinges on reasonableness as a virtue, while the ordinary man refers more to a relatable, average sort of person. The former conceptualises reasonableness, sensibleness, goodness into the narrative of the ideal; that is, what should statistically and prescriptively be the ideal. The latter balances idealness with what is commonly found making reasonableness an "intuition about the relevance of both what is good and what is common."[83] In trademark law, the ordinary person standard where the conduct of the ordinary person when confronted with a subtly deceptive situation that requires the same amount of attention and intelligence as can be given in an ordinary, almost negligible situation is a mainstay across common law jurisdictions.

In Amritdhara Pharmacy v Satyadeo Gupta,[84] the Supreme Court of India resting upon the conception of unusually stupid people being a rarity or anomaly, recommended that similarity must be tested by looking at the composite mark and not the sum of parts which would very easily escape the notice of

an average consumer of average intelligence:

"What we have to consider here is the overall similarity of the composite words, having regard to the circumstance that the goods bearing the two names are medicinal preparations of the same description. We are aware that the admission of a mark is not to be refused, because unusually stupid people, 'fools or idiots', may be deceived. A critical comparison of the two names may disclose some points of difference, but an unwary purchaser of average intelligence and imperfect recollection would be deceived by the overall similarity of the two names having regard to the nature of the medicine he is looking for with a somewhat vague ***E.I.P.R. 807*** recollection that he had purchased a similar medicine on a previous occasion with a similar name. The trade mark (sic) is the whole thing- the whole word has to be considered."[85]

Amritadhara was crucial in forming the Supreme Court's ruling in Cadila. The Court relied upon the standard set in the case to further develop the two questions to establish deceptive resemblance asked in Amritdhara; *(i)* whom the resemblance must be likely to deceive or confuse, and *(ii)* what rules of comparison are to be adopted in judging whether such resemblance exists. Confusion was acknowledged to be a "state of mind"[86] of a consumer. Amritdhara also looked at Re Pianotist's Application,[87] a case from 1906, that laid a preliminary test for similarity. The courts stated that marks must be judged holistically, through both sounds and visuals. This means the nature of the goods to which they are applied must be considered, along with the nature and kind of customer who would be likely to buy them. In addition to this, all surrounding circumstances must be considered too, after which confusion can be checked. It is not always necessary or a prerequisite that the injury of one man will result in another's illicit benefit, but it is possible that it would lead to confusion in the mind of the public.

India inherited a template for the similarity doctrine in the form of judgments like Crook's, and Pianotist. Despite possessing somewhat rudimentary contours to their tests, both cases amongst others allowed the examination of similarity on the basis of consumer protection. Perhaps, these tests, are inadequate in their bare bones form for the purposes of the Indian ecosystem. They do not consider, despite their elastic contours, the nuance of similarity across classes in different markets, the average literacy rates of "ordinary people," the range and variety of languages spoken by them and the differences in phonetics, their social classes and economic status, and their relationship with the English language. This is where Cadila identified and filled the gap. Cadila's test for similarity was formed after much consideration a three-judge bench. Its impact on the assessment of similarity is far-reaching. However, what Cadila did better than any other case was establish that judges were no longer looking at common law precedent as legal tradition, rather, as a robust and malleable means to further the interest of Indians within a system that was not made for them.

2.2 The battle of the malaria drugs: Cadila Healthcare v Cadila Pharmaceuticals

Following a family settlement in 1995, the Cadila Group[88] was restructured into Cadila Healthcare and Cadila Pharmaceuticals.[89] The restructuring agreement allowed both to use "Cadila" as a corporate name. Cadila Healthcare began marketing medication under the trade name *Falcigo*, containing artesunate for the treatment of malaria; a drug commonly called Falcipharum. Subsequently, Cadila Pharmaceuticals began manufacturing a drug containing Mefloquine Hydrochloride under the trade name, *Falcitab*. This medication could also be used for the treatment of Falcipharum Malaria. Both products were in the class of trademarks, were distributed through similar channels and had the same end user; not patients but doctors who would eventually prescribe them to their sick patients. Cadila Healthcare, the plaintiff, brought an infringement action against the defendant, Cadila Pharmaceuticals, alleging that the latter's mark. It also alleged that the potential confusion caused could carry serious consequences for patient safety. The defendant countered this allegation, stating that the marks were sufficiently distinct and that confusion was unlikely particularly as the drugs were Schedule L prescription medicines dispensed under professional supervision. The questions for consideration before the Supreme Court were, *(i)* whether there is a likelihood of confusion and deception between the two, and *(ii)* whether the use of the trademark Falcitab by the defendant, Cadila Pharmaceuticals infringes on the plaintiff, Cadila Healthcare's rights.

The three judge bench of Justices BN Kirpal, Doraiswamy Raju, and Brijesh Kumar considered the entire catalogue of Indian trademark jurisprudence that attempted to establish standards for similarity. This was a significant legal development, considering just a few decades ago, Justice Ayyangar had in his report despaired of developing a definitional boundary for similarity. He stated that on the standard of the degree of similarity or the degree of identity between the two marks that he was unable to foresee that any objective standard of the degree of similarity could ever be set out in

legislative form such that could be applied by Courts. He relates that he found himself "utterly unable to frame a definition which would draw any distinction between a similarity sufficient to deceive and a similarity nearly identical which of course, is also calculated to deceive."[90] There was reportedly, no point of distinction between the two: ***E.I.P.R. 808***

"Unless one were able to put down in so many terms the items of similarity that might exist and say that if it exceeded a particular number it should be treated as counterfeiting and If it fell short of that number but still sufficient to deceive or mislead it would be a false mark it would be impossible to frame a definition which distinguished between the two I have left this task as hopeless."[91]

It would be errant to assume that no Court had attempted to do what Justice Ayyangar thought could not be credibly done. While cases such as Crook's and Pianotist 's have been relied upon in the past, the factual matrix of Cadila was quite different, in that it concerned pharmaceutical products, and the consumer could not be considered an average or ordinary consumer. The consumer base here did not fit Wendell's combination of the reasonable man, where reasonableness met the commonplace. The consumer for a pharmaceutical product is one that can be described as an informed consumer, with a larger, more nuanced awareness of the product they are going to purchase. The product, in turn, can affect life and death. The stakes in this case were much higher than if the consumer was to buy laundry detergent as in Crook's or was to buy musical instruments as in Pianotist 's. It was different also for another reason; the linguistic and phonetic nuances that must be considered for any name trademark in India.

The three judge bench in Cadila relied on the opinion of Desai J in Corn Products Co v Shangri La Foods [92] where the issue hinged on two similar sounding marks, "Glucovita" and "Gluvita." Ruminating upon the importance of first impressions, the court had stated in that case that:

"English cases proceeding on the English way of pronouncing an English word by Englishmen, which it may be stated is not always the same, may not be of much assistance in our country in deciding questions of phonetic similarity. It cannot be overlooked that the word is an English word which to the mass of the Indian people is a foreign word."[93]

At the point, the Court in Cadila emphasised the need to consider English words as they are, as words foreign to Indians. Therefore, for an examination of what the first impression could be, the mark must be considered as whole, as was stated in Amritdhara.

While considering the nature of the products that the marks are bearing in this case, the Court relied on Cole Chemical Co v Cole Laboratories,[94] wherein it was held that confusion in medical products must be avoided, and great care must be taken to prevent any possibility of confusion.

The argument of the defendants was also dismissed with the dictum from Schering Corp v Alza Corp, [95] that stated that the knowledge of physicians and pharmacists of the medical field does not immunise them from confusion. The Court also considered Lambert Pharmacol Ltd v Bolton Chemical Corp, a 1915 case.[96] It was observed that in the field of medicinal remedies, the courts may not speculate on the *probability* of confusion. If there is any possibility of confusion in medicine, public policy requires the use of confusingly similar names.

Finally, the Court decided that the seven following factors must be considered:[97]

The nature of the mark, such as whether marks are word, graphic, or label marks. Marks must be considered as whole,

The degree of resemblance, i.e the overall structural, visual, and phonetic similarity and similarity of the idea in the two marks and the facts as to whether it is (sic) reasonable likelihood to cause confusion should be considered,

The nature of goods in respect of which they are used,

The similarity in the nature, character, and performance of a market opponent's goods,

The class of consumers who are most likely to buy the product bearing the mark in question, their educational or intellectual background, and the level of care they are likely to exercise in purchasing and/or using the goods,

The mode of purchasing the goods or placing orders for the goods, and

Any other surrounding circumstances which may be relevant.

These seven factors are a non-exhaustive list that do not all need to be rigidly adhered to. It is simple to assume that the seven factors test is the crux of Cadila's innovation; it is just the vehicle of innovation. Cadila changes the function of the similarity doctrine, reorienting an imperialist inheritance to Indian conditions. When considered individually, each factor does not present a novelty; in fact they echo the ratios in Pianotist and Amritadhara illustrating that they are built upon common law precedent and the factors have not been formed ex nihilo. What can be claimed is that these fragmented, perhaps incomplete individual considerations that appeared sporadically across English and Indian similarity jurisprudence have been collected neatly into one actionable legal method of application. The contribution ***E.I.P.R. 809*** of Cadila therefore lies less in inventing new criteria than in synthesising existing common-law principles into a coherent methodology for assessing similarity.

2.2 The legacy of Cadila: interpretation, consumers, language, and landmarks

The significance of the judgment is better understood by examining the functions performed by the seven factors rather than treating each factor as an independent doctrinal innovation.

The first four factors demonstrate that the Supreme Court in Cadila consciously retained the traditional common law understanding of similarity. The Court continued to require an examination of the nature of the mark, the overall degree of resemblance, and the relationship between the competing goods. In doing so, it reaffirmed the long-standing principle originating in Pianotist that similarity cannot be determined by dissecting marks into individual components but must instead be assessed holistically through their visual, structural, phonetic and conceptual impressions. Likewise, the inquiry into the nature and character of the competing goods reflects the classical common law concern with the likelihood of commercial confusion rather than abstract resemblance. These factors signal continuity of common law tradition rather than departure. Cadila has thereby accepted the inherited architecture of the common law similarity doctrine and has reaffirmed the central principles and values of it such as source identification, deception, and consumer confusion.

The fifth and sixth factors constitute the judgment's first significant modification of the inherited template. Earlier common law authorities often proceeded from the relatively abstract notion of the ordinary purchaser exercising average intelligence and imperfect recollection. While this formulation continued to influence Indian jurisprudence, Cadila requires courts to identify the actual classification of consumers likely to purchase the product, their educational background, the responsibility and degree of care they must exhibit, and the manner in which purchasing decisions were made. The Court requires similarity to now be context sensitive; contingent upon the characteristics of the relevant market, recognising that the probability of confusion necessarily varies according to the nature of consumers and commercial practices.

This shift is particularly significant in pharmaceutical disputes, where consumers frequently rely upon intermediaries such as doctors, pharmacists, or caregivers and where purchasing decisions may occur under conditions of urgency rather than careful comparison.

The seventh factor arguably performs the most important jurisprudential function within the judgment. As a departure from other common law legal transplants, Cadila expressly acknowledges that English principles cannot simply be transplanted into India without adaptation. The scrutiny and analysis placed on the factor of language emphasises the importance of considering nuances such as India's multilingual population, varying literacy levels, differing pronunciation of words, and the potentially catastrophic consequences of confusion in medicinal products. The open-ended nature of the seventh factor therefore functions as a mechanism through which local social conditions become legally relevant. Rather than confining courts to a rigid checklist, Cadila creates an environment of inclusivity, allowing judges after Cadila to incorporate circumstances unique to Indian markets into the similarity test.

Another notable point is that the principles of Cadila are not genetically linked to just cases of pharmaceutical trademarks. While imposing stricter standards of examination for pharmaceutical trademarks due to the delicate nature and effect of products bearing those marks, it would not be wholly accurate to describe the decision as sector specific. The principles developed by the Supreme Court in this decision are intended. How can this be ascertained?

In Jaishri Laxmanrao Patil v Union of India,[98] Nageswara Rao J opined on the interpretation of statute, that judge-made law must reflect the *mens* or *sententia legis*, that is, the meaning of the law. Referring to Wendell Holmes Jr,[99] his opinion states:

"If the language of the meaning of the statute is plain, there is no need for construction as legislative intention is revealed by the apparent meaning… legislative intent must be primarily ascertained from the language used in statute itself."[100]

It is not suggestive that this interpretative rule cannot be applied to judicial precedent. If Cadila's judgement hinges on seven factors that must be considered while examining similarity between marks—not just pharmaceutical marks—then a direct inference can be made that the judgement is not sector agnostic. One of the most important factors in understanding this decision is that it is not narrow in its scope. Even the seven factors have been designed in a manner to afford flexibility to future similarity examinations.

Further, the seven factors give rise to another point that Cadila expounds on; the understanding of who a consumer is based on the stringency of the test for confusion. As economists Ramello and Silva observe,[101] a trademark is a sign, where the signifier in the identifiable sign and the signified is the semantic content of the sign and the referent is that object to which both the sign and meaning are referred. It is inherently an information transfer as any other semiotic device. The reception of this semiotic device by consumers is ***E.I.P.R. 810*** dependent on the amount of information contained within. Ramello and Silva observe, that, in the absence of adequate information, consumers are divested of the ability to evaluate the object bearing the sign. What consumers usually evaluate would be the quality of the sign-bearing object and make sub-optimal purchasing choices (for the market) based on that determination.[102] Consumers are exposed to overpriced, overvalued sub-par products and a shrinking market which is detrimental to economic welfare. The economic and legal reason for prevention of confusion between two information bearing signs would logically be to safeguard the consumer, the market, and the seller of the product.

Does the product that bears the sign matter? The court clearly identifies the pharmaceutical products in Cadila as being Schedule L products, a demarcation that carves out a relevant market for those products, namely hospitals and clinics. Therefore, the product creates its market. The consumer for such products cannot be "unwary". Citing the Amritadhara judgment, wherein the mark-bearing product was a pharmaceutical product that could be bought over the counter at a pharmacy, the court in Cadila examines the possibility of confusion during admittance of the mark in the first place. It notes that it was stated in Amritadhara:

"That a mark is likely to deceive or cause confusion by its resemblance to another already on the register if it is likely to do so in the course of its legitimate use in a market where the two marks are assumed to be in use by traders in that market."[103]

The marks at the heart of the similarity question in this case were competing in the same market, and the defendant claimed that comparative confusion was unlikely to arise in the minds of consumers as they were well read and were in possession of the degree of intelligence required to process the contents and nuances of the mark-bearing products so as to know the difference.

Relying upon American precedent, and perhaps in furtherance of common law tradition, the court in Cadila built upon the already extant understanding that higher judicial scrutiny is required while assessing confusion over marks on medicinal products. Is this necessary when the type of consumer exceeds the bar of "ordinary?" Relying upon RJ Strasenburgh Co v Kenwood Laboratories Inc.,[104] it was seen that physicians are not immune to confusion. Literacy does not equate to full comprehension in every situation. In Strasenburgh, it was hypothesised that prescriptions from physicians are often handwritten and not unmistakably legible. These facts, it was said, make the possibility made by pharmacists while providing the prescribed drugs much higher especially if logos are similar or the products bear similar sounding names. What if, like with Falcipharum and Falcigo, the drug compositions and ingredients are different and are meant for treatment of different maladies? It would be even more detrimental if the two competing products contained different compositions to treat the same malady. Similarity in such a case would be devastating as noted by the court in Cadila. It notes that therein lies a heavier imposition of the duty of care upon courts to be vigilant about the defendant's drug.

Would it be easy for a physician or a pharmacist, trained as they are, to confuse word marks? Indeed. Here, the nuance of language plays an integral role. As was said Schering and relied upon in Cadila, knowledge of one's field does not signify knowledge of marks. Marks are an advertising tool for owners. The rise of brand name drugs means that the physician now becomes a mediate consumer, able to influence the purchasing decisions of the end consumer. Their lack of immunity in making mistakes because of human frailties also extends to language. The prescription of these drugs is not

limited to urbane, English-comfortable areas. The court observed:

"As far as the present case is concerned, although both the drugs are sold under the prescription but this fact alone is not sufficient to prevent confusion which is otherwise likely to occur. In view of the varying infrastructure for supervision of physicians and pharmacists of (sic) medical profession in our country due to linguistic, urban, semi-urban (sic) and rural divide across the country and with high degree of possibility of even accidental negligence, strict measures to prevent any confusion arising from similarity of marks among medicines are required to be taken."

The question stands; why is Cadila so different from Pianotist or Crooks ? It is not the simple quantum of a seven-factor test, rather the elevation or the development of judicial understanding from a bare bones test handed over as an inheritance. Granted it rests upon these cases as is wont to happen in precedential judicial system, but it is the molding of judicial understanding to ground realities that makes Cadila a landmark and a point of realisation that much like the game of cricket, common law in India is now distinctly Indian.

Cadila is significant because it dramatically demonstrates the amalgamation of the common law tradition to Indian society through judicial interpretation, moulding it to Indian ground realities and society. The trajectory this article traces is not a series of legal innovations, rather a continuous common law lineage; from medieval merchant and guild marks to the development of English (and then common) doctrines of fraud, passing off, and similarity, and finally the structured Indian similarity test in Cadila.

Yet, lineage alone is a poor way to explain the significance of the contemporary Indian doctrine of similarity. Cadila demonstrates that common-law principles do not endure through mechanical adherence. They must have the capacity to respond to social, ***E.I.P.R. 811*** linguistic, commercial nuances of the jurisdiction in which they operate. Therefore, the similarity doctrine elevates trademarks from a mechanism for preventing consumer confusion to a demonstration of the adaptability of the common law itself. It illustrates how a transplanted doctrine may retain its conceptual foundations while acquiring a distinctly Indian hue. In this sense, Cadila represents not a departure from common law, but the realisation that a legal inheritance survives only when it is capable of becoming the people's law.

3. Conclusion

Despite the obvious legacy of colonialism being common law, the trademark regime in India can no longer be identified in its current state as a ready inheritance. Just as the trademark regime at common law has evolved and stretched to meet the needs of the market as it grew-for instance, the evolution of a merchant mark into an asset-it has in India, the United States of America, and Australia, evolved from an imperialist creature into something wholly domestic, familiar, and distinctly indigenous. In India, the Cadila judgment is symbolic of a large leap. The Supreme Court reformulated the standard to examine similarity and prevent the likelihood of confusion amongst consumers of all levels of understanding. The multi-factor test is neither rigid overly permissive; prioritises public safety. It is, finally, Indian common law made for Indians.

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1. Henry was the 28th king of England, generally considered weak and ineffectual, but has been credited with many accomplishments such as patronising medieval architecture and establishing the first semblance of a parliament. See *Jonathan Sumption, "Good Man, Bad King: A Portrait of Henry III" (The Spectator, 10 June 2023)*, https://www.spectator.co.uk/article/good-man-bad-king-a-portrait-of-henry-iii/ [Accessed 5 December 2025].

2. The Assize of Bread is defined as courts to prosecute bakers selling underweight or overpriced bread, established in 1266 and abolished in 1815. See *David A. Bender, A Dictionary of Food and Nutrition 3rd edn (Oxford: OUP, 2011)*. A baker was prohibited from accruing more than the lucrum pistoris, "the gain of the baker"; the Assizes hinged upon this legally permitted profit margin that included the cost of the ingredients, the milling fees, oven maintenance, labour, and the baker's profit. See *A. Luders (ed.), The Statutes of the Realm: Printed by Command of His Majesty King George the Third, in Pursuance of an Address of the House of Commons of Great Britain, From Original Records and Authentic Manuscripts, (London: Record Commission, 1810–1828), Vol.I, pp.199–200* sourced from Jerome Arkenberg, "Medieval Sourcebook:The Assizes of Bread, Beer, & Lucrum Pistoris", Fordham University Internet History Sourcebooks Project.

3. The Magna Carta of 1215 provided a foundation for modern English law and society today. Articles 39 and 40 of the Magna Carta contain the essence of the rule of law. See *Graham Smith and Anna Green, "The Magna Carta- 800 Years of Public History" in Paula Hamilton and James B. Gardner (eds), The Oxford Handbook of Public History (Oxford: OUP, 2017)*.

4. The Provisions suggested a new form of government where an elected council held power to make decisions, and the monarch's power to do the same was limited to the council's approval. See E.F. Jacob, "What Were The Provisions of Oxford?" (1924) 9(35) History 188–200.

5. Both the Magna Carta and the Provisions of Oxford can be considered cornerstones of English constitutional history and because of colonial influence, its legal concepts such as the rule of law and parliamentary democracy reverberate across common law jurisdictions. See George Burton Adams, "The Origin of the English Constitution" (1908) 13(2) The American Historical Review.

6. An early example of trademark albeit with limited function. See WIPO, "Trademarks Past and Present" (*WIPO Magazine, 30 March 2005*), https://www.wipo.int/en/web/wipo-magazine/articles/trademarks-past-and-present-34704 [Accessed 10 December 2025].

7. Christopher Dyer, "A Simple Food With Many Meanings: Bread In Late Medieval England" (2023) 49(5) Journal of Medieval History.

8. Bread was "emblematic of prosperity and fruitfulness", easily portable, and could be made from grains other than wheat. Clearly carrying such heavy import, bread in 1266, was representative of political and economic power. See Dyer, "A Simple Food With Many Meanings: Bread In Late Medieval England" (2023) 49(5) Journal of Medieval History.

9. Examples include the 1766 Riots in England, the Flour War in France from 1775–1776, and even during the French Revolution when in 1789, there was a Women's March on Versailles. Bread is not just food, it is symbolic of life, itself.

10. As Petersen and Jenkins observe, "Fear of such consequences… was periodically enlivened by foreign example: for instance, Lord Liverpool, who had witnessed the fall of the Bastille, 'constantly fretted lest hunger' ('or national bankruptcy or a licentious press') 'should spark off a French-style revolution…' Behind official policy was an awareness that might be formulated as a definition: (sic) a staple is that which must be supplied lest a society break down." See *Christian Petersen and Andrew Jenkins, Bread and the British Economy, 1770-1870 (Routledge: Taylor and Francis, 1995)*.

11. Arif Bulkan, "Disentangling the Sources and Nature of Indigenous Rights: A Critical Examination of Common Law Jurisprudence" (2012) 61(4) International and Comparative Law Quarterly 823–853.

12. Here, in this work, Empire predominantly refers to the British Empire.

13. See *Mahendra Pal Singh and Niraj Kumar, The Indian Legal System (New Delhi: OUP and NLUD, 2019), Ch.1*, and Marc Galanter, "The Displacement of Traditional Law in Modern India" (1968) 25(4) Journal of Social Issues.

14. Galanter, "The Displacement of Traditional Law in Modern India" (1968) 25(4) Journal of Social Issues.

15. Although it is still the primary function. See McKenna's argument on trademark law expansion finding its roots in the source identification concept of trademarks. The only point that provides definitional boundaries to the source identification concept is consumer perspective, which is fluent and gives way to a broad use of trademark law but does not provide fodder for deeper theoretical understanding, limiting trademark function as it does, to one point. See Mark McKenna, "Trademark Use and the Problem of Source" (2009) U. Ill. L. Rev. 773.

16. Robert Bone, "Trademark Functionality Re-examined" (2015) 7(1) Journal of Legal Analysis 183–246

17. See Circuit Judge Denison's opinion in G & C Merriam Co v Saalfield 198 F.369, 373 (6th Cir. 1912); "The entire substantive law of trade-marks (sic)… is a branch of the broader law of unfair competition. The ultimate offense always is that defendant has passed off his goods as and for those of the complainant."

18. Robert Bone, "Hunting Goodwill: A History of the Concept of Goodwill in Trademark Law" (2005) Boston University School of Law 548–59.

19. *Pal Singh and Kumar, The Indian Legal System (2019), Ch.1*.

20. These efforts were rare in England but find resonance throughout the Commonwealth. It is appropriate to recount Bentham's struggle for codification and his great resentment for the practice of law in his day, which was dominated by lawyers and judges opposed to any law reform. Bentham thus dedicated his "genius" to legislative reform. See Dean Alfange Jr, "Jeremy Bentham and the Codification of Law" (1969) 55 Cornell L. Rev. 58

21. See Bone, "Trademark Functionality Re-examined" (2015) 7(1) Journal of Legal Analysis 183–246.

22. Edward H. Levi, "An Introduction to Legal Reasoning" (1948) 15(3) Chicago University Press Chicago 501–574.

23. Shivaprasad Swaminathan, "Mos Geometricus and the Common Law Mind: Interrogating Contract Theory" (2019) 82 Modern Law Review 46.

24. India is described as a constitutional common law country by Justice Setalvad in his Hamlyn Lectures on The Common Law in India. See *Motilal C. Setalvad, "The Common Law in India", Hamlyn Lectures (London: Steven and Sons, 1960)*.

25. See Shivaprasad Swaminathan, "Persistence of the 'Codeless Myriad': The Indian Contract Act and a Puzzle Surrounding Common Law Codification" (2023) 44(1) Statute Law Review 1–16.

26. Borrowed liberally from Swaminathan's characterisation of Indian contract law's transplantation. Swaminathan, "Persistence of the 'Codeless Myriad': The Indian Contract Act and a Puzzle Surrounding Common Law Codification" (2023) 44(1) Statute Law Review 1.

27. *Pal Singh and Kumar, The Indian Legal System (2019), Ch.2, p.23*.

28. *M.P. Jain, Outlines of Indian Legal and Constitutional History, 6th edn (Nagpur: Wadhwa and Co, 2007)*.

29. *Shashi Tharoor, "'But what about the railways...?' The myth of Britain's gifts to India", The Guardian (8 March 2017)*, https://www.theguardian.com/world/2017/mar/08/india-britain-empire-railways-myths-gifts#:~:text=This%20was%2C%20in%20many%20way [Accessed 16 December 2025].

30. *Shashi Tharoor, Inglorious Empire: What the British Did to India (London: Penguin, 2016), Ch.3, p.89*.

31. Jean-Louis Halpérin, "Western Legal Transplants and India" (2010) 2(1) Jindal Global Law Review 14–40.

32. Eric Stokes, *The English Utilitarians and India* (Oxford: Clarendon Press, 1959), p.302.

33. Halpérin, "Western Legal Transplants and India" (2010) 2(1) Jindal Global Law Review 14–40.

34. Advocate-General of Bengal v Ranee Surnomoye Dossee (1863) 9 Moore Ind.App. at 424.

35. *Pal Singh and Kumar, The Indian Legal System (2019)*, Introduction, p.xxxi

36. It must be mentioned that India was the first territory in which the British encountered personal laws and in an attempt of retention, and perhaps a wary distancing from the complications of the heady combination of law and religion that most personal laws tend to make, they left them uncoded. There are distinct bodies of law such as Anglo-Hindu law and Anglo-Islamic law, however.

37. *Setalvad, "The Common Law in India", Hamlyn Lectures (1960), p.1*.

38. *Setalvad, "The Common Law in India", Hamlyn Lectures (1960), p.2*.

39. *Marc Galanter, "The Modernization of Law" in M. Weiner (ed.), Modernization: The Dynamics of Growth (New York: Basic Books, 1966), p.162*.

40. *Galanter, "The Modernization of Law" in Weiner (ed.), Modernization: The Dynamics of Growth (1966), p.162*.

41. *Fali Nariman, India's Legal System: Can It Be Saved? (New Delhi: Penguin, 2006)*.

42. Isha Jain, "Codification and Reform of the Law of Evidence in the United Kingdom: From Stephen's Code Bill to the Criminal Justice Act" (2017) 38(2) Statute Law Review.

43. Section 478 in the now repealed Indian Penal Code 1860.

44. See Mark McKenna, "Property and Equity in Trademark Law" (2019) 23 Marquette Intellectual Property Law Review 117.

45. *Frank I. Schechter, The Historical Foundations of the Law Relating to Trade-Marks (New York: Columbia Legal Studies, 1925), p.35*.

46. *William Yarrell, History of British Birds, 4th edn (London: John Van Voorst, 1871–1885), p.329*.

47. *Schechter, The Historical Foundations of the Law Relating to Trade-Marks (1925), p.35*.

48. See *Schechter, The Historical Foundations of the Law Relating to Trade-Marks (1925), pp.35–36*.

49. Leather Cloth Co v American Leather Cloth Co 46 Eng. Rep. 868 (Ch), United Kingdom.

50. Leather Cloth Co v American Leather Cloth Co 46 Eng. Rep. 868 (Ch), United Kingdom at 142.

51. Croft v Day 49 Eng. Rep. 994 (Rolls Ct), United Kingdom.

52. Mark McKenna, "The Normative Foundations of Trademark Law" (2007) 82 Notre Dame Law Review 1856.

53. McKenna, "The Normative Foundations of Trademark Law" (2007) 82 Notre Dame Law Review 1856.

54. Schechter references Pollock's work on Torts, to illustrate the changing nature of the mark, first from a tool to prevent fraud and eventually into an incorporeal franchise. See *Schechter, The Historical Foundations of the Law Relating to Trade-Marks (1925), pp.4 and 5*. See also *Frederick Pollock, The Law of Torts: A Treatise on the Principles of Obligations Arising from Civil Wrongs in the Common Law, 12th edn (London: Stevens & Sons Ltd, 1923), pp.312–313*.

55. As in the case of the makers of wooden measures for wine and ale. See *Schechter, The Historical Foundations of the Law Relating to Trade-Marks (1925), pp.56 and 57*.

56. *Schechter, The Historical Foundations of the Law Relating to Trade-Marks (1925), p.78*

57. *Schechter, The Historical Foundations of the Law Relating to Trade-Marks (1925), p.108*

58. *Schechter, The Historical Foundations of the Law Relating to Trade-Marks (1925), p.108*.

59. *Schechter, The Historical Foundations of the Law Relating to Trade-Marks (1925), p.109*.

60. Champion Spark Plug Co. v Sanders 156 F 2d 488, United States of America.

61. Baker v Master Printers Union 34 F. Supp. 808, 811, 47 U.S.P.Q. 69 (D.N.J. 1940), United States of America. See also, *J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, 5th edn (Deerfield, IL: Thomson Reuters, 1996), Ch.23 and s.23.20*.

62. Candee, Swan & Co v Deere & Co 54 Ill. 439, United States of America.

63. Arsenal Football Club Plc v Reed (C-206/01) EU:C:2002:651; [2003] Ch. 454.

64. See McKenna's work for a detailed discussion on unfair competition and trademarks. McKenna, "The Normative Foundations of Trademark Law" (2007) 82 Notre Dame Law Review.

65. See McKenna, "The Normative Foundations of Trademark Law" (2007) 82 Notre Dame Law Review and Barbra Lauriat, "A 'First' Case at Common Law" (Law and History Review), https://lawandhistoryreview.org/article/barbara-lauriat-a-first-case-at-common-law/#:~:text=Reports%20of%20the%20Trial&text=Thus%2C%2 [Accessed 16 December 2025].

66. Southern v How 79 Eng. Rep. 1243 (1618), United Kingdom.

67. Southern v How 79 Eng. Rep. 1243 (1618), United Kingdom.

68. John Popham Knight, Lord Chief Justice as he was during the reign of Elizabeth, is known for his Case Reports published posthumously, revealing much of late Elizabethan and early Jacobean common law. Reports found, https://quod.lib.umich.edu/e/eebo2/A55452.0001.001/1:4?rgn=div1;view=fulltext published by the University of Michigan Library Digital Collections [Accessed 8 January 2025].

69. Taken from McKenna, "The Normative Foundations of Trademark Law" (2007) 82 Notre Dame Law Review.

70. Referring to the Law Reports from the Queen's Bench during Elizabeth I's reign.

71. *Schechter, The Historical Foundations of the Law Relating to Trade-Marks (1925), p.123*

72. *Schechter, The Historical Foundations of the Law Relating to Trade-Marks (1925), p.123*

73. *Schechter, The Historical Foundations of the Law Relating to Trade-Marks (1925), p.126*

74. Sykes v Sykes 107 Eng. Rep. 834 (K.B. 1824).

75. Blanchard v Hill 26 Eng. Rep. 692 (Ch.), United Kingdom.

76. Robinson and Roberts v Wheble 1771, United Kingdom.

77. Government of India, Ministry of Commerce and Industry, *The Ayyangar Committee Report on Trademarks Law Revision* (*SCC OnLine, 1955*).

78. *Government of India, Ministry of Commerce and Industry, The Ayyangar Committee Report on Trademarks Law Revision* (*SCC OnLine, 1955), p.2*.

79. Cadila Healthcare Ltd v Cadila Pharmaceuticals Ltd (2001) 5 SCC 73.

80. Crooks' Trademark (1914), United Kingdom.

81. Australian Woollen Mills Ltd v F S Walton & Co Ltd [1937] HCA 5, Australia.

82. Australian Woollen Mills Ltd v F S Walton & Co Ltd [1937] HCA 5, Australia at 658

83. Justice Oliver Wendell's opinion referred to in Kevin Tobia, "Legal standards invoke the 'reasonable person.' Who is it?", *Aeon*, https://aeon.co/ideas/legal-standards-invoke-the-reasonable-person-who-is-it [Accessed 8 January 2026].

84. Amritdhara Pharmacy v Satyadeo Gupta AIR 1963 SC 449, India.

85. Amritdhara Pharmacy v Satyadeo Gupta AIR 1963 SC 449 at 8.

86. Amritdhara Pharmacy v Satyadeo Gupta AIR 1963 SC 449 at 6.

87. Re Pianotist's Application (1906) 23 RPC 774, United Kingdom.

88. In 1951, two friends, Indravadan Modi and Ramanbhai Patel opened Cadila Laboratories, a pharmaceutical firm that produced life-saving drugs such as Polycap (for prevention and treatment of cardiovascular diseases), Risorine (for treatment of tuberculosis), and Mycidac-C, the world's first active immunotherapy in lung cancer. Modi's legal heirs received Cadila Pharmaceuticals and Patel's heirs received Cadila Healthcare. See *Sohini Das, "Carrying the legacy forward: Rajiv Modi" (Business Standard, 28 January 2014)*, https://www.business-standard.com/article/companies/carrying-the-legacy-forward-rajiv-modi-114012801184_1.html [Accessed 9 January 2025].

89. Case facts have been synthesised from the judgement; Cadila Pharmaceuticals v Cadila Healthcare (2001) 5 SCC 73.

90. *Government of India, Ministry of Commerce and Industry, The Ayyangar Committee Report on Trademarks Law Revision* (*SCC OnLine, 1955), p.91*.

91. *Government of India, Ministry of Commerce and Industry, The Ayyangar Committee Report on Trademarks Law Revision* (*SCC OnLine, 1955*).

92. Corn Products Co v Shangri La Foods AIR 1960 SC 142, India.

93. Corn Products Co v Shangri La Foods AIR 1960 SC 142, India.

94. Cole Chemical Co v Cole Laboratories 118 F. Supp. 612 (E.D. Mo. 1954), United States of America.

95. Schering Corp v Alza Corp 207 USPQ 504, United States of America.

96. Lambert Pharmacol Ltd v Bolton Chemical Corp (1915) 219 F. 325, United States of America.

97. Cadila Healthcare v Cadila Pharmaceuticals (2001) 5 SCC 73.

98. Jaishri Laxmanrao Patil v Union of India SLP (C) 15737/2019

99. Holmes Jr's words have been taken by Justice Rao from a personal letter, the reference of which was made in Frankfurter's discussion on interpretation of statutes. Felix Frankfurter, "Some Reflections on the Reading of Statutes" (1947) 47(4) Columbia Law Review 527–546, 538.

100. See Justice Nageshwara Rao's opinion in Jaishri Laxmanrao Patil v Union of India, Civ Appeal No.3123 of 2020, at [6].

101. Giovanni B. Ramello and Francesco Silva, "Appropriating signs and meaning: the elusive economics of trademark" (2006) 15(6) Industrial and Corporate Change 937–963.

102. Ramello and Silva, "Appropriating signs and meaning: the elusive economics of trademark" (2006) 15(6) Industrial and Corporate Change 937–963.

103. Cadila Healthcare v Cadila Pharmaceuticals (2001) 5 SCC 73.

104. RJ Strasenburgh Co v Kenwood Laboratories Inc. 106 USPQ 379 (1955).

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