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# **THE CASE OF 'BOROLINE' VS 'BOROBEAUTY': A LEGAL EXAMINATION OF TRADEMARK INFRINGEMENT**

AUTHORED BY - PRANJAL SRIVASTAV & SHREYA SRIVASTAVA

## **Background<sup>1</sup>**

The case of 'Boroline vs Borobeauty' involves a dispute between G.D. Pharmaceuticals Private Ltd and M/S Centro Products. Boroline is a well-established pharmaceutical company, manufacturing a wide range of products in health and skincare. The G.D. Pharmaceutical Ltd.- owner of Boroline alleged M/S Centro Products for trademark infringement, which began marketing its product under the name Borobeauty. According to them, the use of the prefix 'Boro' by M/S Centro Products, creates confusion in the consumer market and thus contributes towards the infringement of their intellectual property rights.

## **Introduction**

The legal landscape of trademark law in India has been shaped by several cases with each one of them contributing to the evolution of interpretation of what constitutes trademark infringement. One such case is the dispute between G.D. Pharmaceuticals Private Ltd and M/S Centro Products, commonly known as the 'Boroline vs Borobeauty' case. It distances out as a significant legal confrontation underscoring the balance between protection of intellectual property rights and ensuring fair competition. The article provides an analysis of the case, examining the facts, legal arguments, judicial reasoning and broadening the implications of trademark law for the country.

## **Plaintiff's Arguments**

- Trademark infringement

G.D. Pharmaceuticals based its case on the fact that Boroline was a well-known and registered trademark that had been in use since 1929, it has created significant goodwill and reputation over nearly a century. The plaintiff contended that the defendant's use of the name

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<sup>1</sup> <https://www.livelaw.in/high-court/delhi-high-court/delhi-high-court-declares-boroline-as-well-known-trademark-restrains-use-of-borobeauty-267724>

‘Borobeautey’ was deceptively similar to that of its own, therefore infringing on their trademark rights under the Trademarks Act, 1999. Section 29 of the act says that an infringement occurs when a mark is identical or deceptively similar to a registered trademark. The plaintiff also argued that Borobeautey meets the criteria for deceptive similarity and that the consumers might be misled into believing that it was somehow associated with or endorsed by Boroline.

- Goodwill and reputation

The plaintiff emphasized that the use of Borobeautey would result in the dilution of the goodwill associated with the Boroline brand. They also showcased that Borolin had become synonymous with qualities in skincare products, in the minds of consumers. Therefore, any link with the different and potentially inferior product could very well harm the brand’s long running reputation.

- Passing off

The plaintiffs showcased that the common law doctrine of passing off was relevant in the case. This occurs when one party presents its goods or services as those of another party, deceiving customers which could potentially cause damage to the goodwill and reputation of the original brand. The plaintiff emphasized that M/S Centro Products was attempting to pass off its product as being associated with Borolin by using a name that was deceptively similar.

- Protection of well-known trademarks

Further contention was that Boroline should be granted the highest level of protection as an established trademark under Indian law. Well-known trademarks are trademarks that have gained substantial recognition among the general population and they are protected in cases where any infringement occurs. The plaintiff argued that they have achieved such status and therefore the use of Borobeautey by the defendant did violate the special protection granted under the Trademark Act, 1999.

### **Defendant’s Arguments**

- Lack of confusion

Responding to the claims made by the plaintiff M/S Centro Products, presented several counter arguments. They asserted that the word ‘Boro’ was a commonly used prefix in skin care and pharmaceutical industries. They contended that several other products, such as Boroplus and

Borosoft, use the same prefix and that, 'Boro' was a descriptive term and could not be monopolized by any single entity. Before they argued that both the names concerned were distinct enough in their entity to do away with any confusion among consumers. According to the defendants, the presence of the word 'Boro' in Borobeauty differentiated it enough to avoid any confusion whatsoever, including phonetic and visual. They also claimed that they had no intention to deceive customers and to pass off their product as being associated with Borolin.

- **Common Use of Prefix 'Boro'**

The defendants contended that the use of the prefix 'Boro' is widely used by various companies. According to them, the word is often used by the companies that manufacture products using boric acid or other boron compounds. The defendant argued that G.D. Pharmaceuticals Ltd. cannot claim exclusive rights over the use of the prefix 'Boro' and in consequence there was no infringement of intellectual property rights.

- **Honest concurrent use and unbiased competition:**

The defendant asserted that the name used by both the companies was a case of honest concurrent use, which can be used as a defense against trademark infringement claims. This occurs when two or more companies have identical trademarks independently and in good faith, without the knowledge of other's use. They also argued that the use of 'Borobeauty' constitutes fair competition in the market and is not intended to exploit the goodwill of any other company.

## **Issues<sup>2</sup>**

- **Common use of Marks:** One of the key issues was whether the M/S Centro Products was deceptively using the same name as the Boroline brand with the intention to cause confusion among consumer markets.
- **Well-established trademark protection:** The arguments raised questions regarding the extent of protection granted to such known trademarks like Boroline under the Indian law.
- **Deception:** It was to be determined by the court whether the Galpha Laboratory Ltd used 'Borobeauty' deceptively, creating confusion among the consumers that it was somehow associated with the Boroline brand.
- **False representation and passing off:** This issue was central to the case. The

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<sup>2</sup> <https://indiankanoon.org/doc/58724152/>

- G.D.Pharmaceuticals claimed that the defendants were misrepresenting their products as being associated with the Boroline brand.
- Implication on the brand's reputation: Another issue that was highlighted during the arguments was the impacts and potential damages to the reputation and goodwill of the Boroline brand.
- Unbiased use and non-deceiving intentions: It needs to be determined that whether the use of Borobeautey by the defendants was a case of fair use or whether there was any intention of deceiving the consumers.

### Judicial Reasoning and Decision

The judgment reflected how arguments by both the plaintiff and the defendant were carefully weighed applying the principles of trademark law in the case. The judicial reasoning can be broken down into some key concepts such as<sup>3</sup>-

- Deceptive similarity
- Passing off
- Common use of prefix borrow
- Intent and fair competition and,
- Protection of well known trademarks

In this case of deceptive similarity, the court evaluated the likelihood of consumer confusion between the two marks based on their overall impression, instead of a direct comparison. The court addresses passing off showcasing, the protection of brand's goodwill and reputation. The judgment was given taking into consideration the protection of well known trademarks like Boroline, highlighting the fact that even commonly used prefixes like 'Boro' could not justify similar marks if it intended to cause confusion. The court rejected the claims of honest concurrent use and found that Borobeautey did in fact intend to capitalize on Boroline's established reputation and therefore, constituted trademark infringement. The court in its judgment issues directions to the defendant which included:

- Modifying the trade dress and trademark of their products.
- Ensuring that they look entirely different from the plaintiff's well-known marks.
- They are prohibited to use dark green colors associated with the plaintiff's products.

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<sup>3</sup> <https://indiaipsolutions.com/delhi-high-court-declares-boroline-a-well-known-trademark-restrains-imitation-of-its-trade-dress/>

- They are required to adopt a new trade name and that shall not include the prefix 'BORO'.

In addition, the court ordered the defendant to pay 2 lakh rupees in costs considering the extended duration of the case.

### Statutory Provisions Involved

The main statutes involved in the case includes:

- *The Trademarks Act, 1999: Specific sections include:*

Section 2- Definition of a trademark.

Section 9 - Grounds for refusal of registration.

Section 11- Relative grounds for refusal of registration.

Section 12 -Registration in the case of honest concurrent use or other special circumstances.

Section 28 - Rights conferred by registration.

Section 29 - Infringement of a registered trademark. Section 30 - Limits on the effect of registered trademark.

Section 31 - Registration to be prima facie evidence of a trademark. Section 34 - Prior use of a trademark.

Section 135- Reliefs in suits for infringement or for passing off, including injunction, damages, or accounts of profits.

- *The code of civil procedure 1908:*

Order XXXIX Rules 1 and 2 - Deals with temporary injunction and interlocutory orders.

Section 151- Inherent powers of the court to pass orders to meet the end of justice.

The Specific Relief Act 1963 Section 36 - Temporary injunction.

Section 37 - Perpetual injunction.

Section 38 - Ground for granting perpetual injunction to prevent a breach if an obligation.

Section 39 - Mandatory injunction.

- *Indian Evidence Act 1872*

Section 114 - Court may presume existence of certain facts including the validity of a registered trademark.

## Analysis

The case of Boroline vs Borobeauty is not merely a dispute over trademark infringement but also a profit examination of the intricate balance between proprietary rights and public interest reflecting evolution of IPR laws in India.

The brand Boroline has been synonymous with trust and quality in the domain of antiseptic creams over the decades. It is reputed in the collective consciousness of the general masses. The juxtaposition of the two marks Boroline and Borobeauty does not merely invite a look into phonetic similarities but also invites scrutiny. Any such attempt of interplaying branding consumer perception diminishes the sanctity of intellectual property.

In the labyrinth corridors of trademark law, the act of 1999 stands as the sentinel of registered trademarks conferring upon the register proprietor rights and the ability to prevent unauthorized usage of any identical mark. The defendant's interest in this domain carrying the burden of justification. It therefore becomes relevant to look into the trademarks act and particularly the principle of deceptive similarity. The resemblance between the marks and the target consumer base including the channel of trade- all converge in a matrix that any court must navigate with precision.

Granting injunctive relief under the Specific Relief Act is not merely a procedural formality instead, it is an exercise of equitable discretion. The case established by the Boroline couple with the balance of convenience titling in its favor, warrants such relief. Irreparable harm has been caused as observed by the court due to the damage to reputation, the erosion of market share and the dilution of brand identity.

It is notable that monopolistic rights granted to trademark holders are not absolute; they can be tempered by the need to encourage competition, consumer welfare and innovation. However in this scenario, the protection of Boroline serves public interest due to its prevention of deception and ensuring that the customers are not misled by any superficial similarity. The grant of perpetual injunction against Borobeauty shall not be seen merely as a legal remedy but as a reinforcement of the values of intellectual property law, a system that rewards innovation, ensures honesty and most importantly' protects the consumers.

## Conclusion

The emphasis of the court on consumer perception showcases the critical role of trademarks in maintaining market integrity and consumer trust. The case highlighted how the defense of honest concurrent use was dismissed due to the overwhelming evidence of pre-existing goodwill and the likelihood of causing confusion. The code also recognises that protecting Boroline serves public interest by preventing deception and ensuring fair competition. The code acted not merely as guardian of legal rights but as a protector of market ethics. By safeguarding Boroline, the judiciary has reinforced the values of honesty and integrity in business and commerce. Thus, ensuring that the customer is not misled by any unethical and superficial resemblance. The case emerges as a testament to the delicate balance between protecting proprietary rights and protecting public interest within the framework of the intellectual property arena. The ruling in this case showcases the crucial role trademarks play in protecting the integrity of market and the trust of customers. They don't just serve as identifiers of a brand but as symbols of reliability and quality that customers have come to expect.

## References

1. <https://indiankanoon.org/doc/58724152/>
2. <https://www.livelaw.in/high-court/delhi-high-court/delhi-high-court-declares-boroline-as-well-known-trademark-restrains-use-of-borobeaauty-267724>
3. <https://indiaipsolutions.com/delhi-high-court-declares-boroline-a-well-known-trademark-restrains-imitation-of-its-trade-dress/>