



Wow Momo vs Wow Burger: The Idea and the Infringement

Author: Prakriti Ranjan¹

Abstract

The case analysis examines the judgment of the Delhi High Court in the case of “Wow Momo Foods Private Limited vs Wow Burger & Anr.” raised through an appeal. The case shows a significant development in the field of IP, especially in the area of trade mark jurisprudence. The court overturned the judgment given by a Single-Bench judge, refusing to grant an injunction and held that the respondent infringed the appellant’s registered mark. The case shifted its approach from strict linguistic and technical interpretation to composite distinctiveness, marketplace perception and consumers’ psychology. The judgment importantly introduces and legitimises the concept of “idea infringement” in trade mark law by protecting the concept of pairing any food items with other English exclamations. The case analysis also discusses about the concerns regarding the monopolisation of common ideas and its impact on fair competition, especially for small traders.

Keywords: *Trade mark, Idea Infringement, Composite Distinctiveness, and Consumers’ Psychology.*

Court Name: High Court of Delhi

Citations: (2025) Delhi HC FAO(OS)(COMM) 143/2025

Coram: Hon’ble Mr. Justice C. Hari Shankar and Hon’ble Mr. Justice Om Prakash Shukla

Appellant: Wow Momo Foods Private Limited

Respondent: Wow Burger & Anr.

Statutes Involved: Trade Marks Act, 1999 (‘the TM Act’)

¹ Third year law student at Chanakya National Law University, Patna.

Facts of the Case:

The Appellant, Wow Momo Foods Private Limited, has multiple registrations for words like WOW MOMO, WOW DIMSUMS, and WOW MOMO INSTANT under the TM Act. It also had registered device marks featuring Wow across Classes 29, 30, 35, 43, and others. The company has over 600 outlets across 30 cities that offer catering services, dine-in, delivery and takeaways under these marks. The company has a turnover of Rs. 453.932 crores in the financial year of 2023-24, while spending Rs. 10.37 crores on promotion in the same year.

Then, in December of the same year, the Appellant discovered that Respondent 1, “Wow Burger”, was planning their entry to the market with the mark of “WOW BURGER” to sell protein-rich vegetarian burgers.

The respondent had previously sold burgers under the mark in Hong Kong. After becoming aware of the entry of the respondent in the Indian market (the geographical market relevant in the present case), the appellant raised a *quia timet suit* (CS Comm 116/2024) seeking an interlocutory injunction against the respondent in the Commercial Division of the Delhi High Court, restraining him from using the marks WOW BURGER, which was delivered by a Single-judge bench in September, 2025.

Judgment of the Single-Bench:

The Single-Bench judge, on September 12, 2025, in the absence of a response from the respondents, dismissed the appeal for the relief claimed, citing the reasons that:

- a) The appellant had neither applied nor could have registered the specific words like WOW, WOW! Or WOW! BURGER;
- b) The few registrations were granted with the condition that they cannot claim exclusivity over any of the specific words in the whole marks.
- c) “WOW” is a commonly used word, as an “exclamatory remark” in the English language. Such words are so common and used ordinarily that they lack distinctiveness; therefore, they are “*not capable of being monopolised*” or claimed by a specific individual or entity.
- d) Relying on the dictionary meaning of the word as “*a quality, property, or element that impresses, excites or delights*”, the Hon’ble judge held that “*Under Section*

9(10)(b)(6) of the Act², a word which merely conveys praise or describes the quality or characteristic of the goods or services, is not entitled to protection as a trade mark or to monopoly.”

The petitioner then appealed via FAO(OS) Comm 143/2025 to a division bench.

Issues Raised:

The main issue involved in the present case before the Division Bench was whether the mark of the Respondent, “WOW BURGER”, infringe the appellant’s registered “WOW!” marks under Section 29(2)(b) of the TM Act.

Legal Concepts mentioned in the present case:

- a) Anti-dissection Rule
- b) Dominant Feature Test
- c) Family of Marks
- d) Initial Interest Test
- e) Idea Infringement

Arguments:

In the appeal against the Single Bench’s decision, the appellant (Wow Momo Food Private Limited) appeared before the Division Bench of the High Court, arguing for exclusivity over the mark. The Respondents, however, did not file the Written Statement.

Petitioner:

The petitioner argued about the exclusivity over the mark “WOW!” In response to the objections raised against it for registration, the appellant replied that “the marks include a combination of the English dictionary word ‘WOW’ with a suffix”. Though the word “WOW”

² The Trade Marks Act 1999, s 9(1)(b).

in itself was ordinary and did not contain any distinctiveness, the distinctiveness was achieved by modifying the word through the addition of a suffix.

Respondent:

The Respondents had filed no written statement, nor did they appear anywhere. They did not advance any arguments either. Therefore, the bench proceeded *ex parte*.

Judgment in this case:

The Division Bench, consisting of Hon'ble Mr. Justice C. Hari Shankar and Hon'ble Mr. Justice Om Prakash Shukla, allowed the appeal, overturning the Single-Bench Judge's dismissal.

It was held that WOW BURGER infringes the word marks of WOW MOMO, WOW DIMSUMS under Section 29(2)(b)³ where the Single-Bench judge overemphasised standalone WOW's commonality. He ignored the composite distinctiveness that was made by adding the 'exclamation' to 'food'. The court overturned the refusal of the injunction by citing various reasons and precedents.

Analysis:

Though the court tried to clarify several issues, at the heart of the decision lies the recognition of "idea infringement." Until now, the prevailing idea has been that ideas themselves cannot be protected; only the expression of the idea can be. However, by granting the injunction in favour of the appellant, the court accepted the view that the other party did not merely copy the word, but the entire underlying concept behind using the word. By doing this, the court effectively opened the way for "owning the idea behind a style of branding."

In the earlier cases, as well as in the Single-Bench judgment, it was consistently reiterated that there can be no monopoly over common and ordinary words such as "WOW." The focus was placed on examining the minor differences in design, font, packaging, and other similar elements to avoid confusion among consumers. However, in the instant case, the court took an unprecedented decision by shifting its focus from dissecting the word in isolation to examining the act of pairing the expression with a food item.

³ Trade Marks Act 1998, s 29(2)(b).

The court held that distinctiveness does not arise from the literal meaning of a word itself, but from the creative use of it. Therefore, the distinctiveness lay not in the word “WOW” per se, but in the creative association of “WOW” with food items. Such an expression can be protected from infringement.

Another focus is on the new concept of “idea infringement”⁴, which is a new concept of its kind. It was held that the idea of combining an exclamation mark with a food item was copied by the respondent. There is a rising likelihood of confusion due to the “*replication of the idea of the mark*”, and therefore, infringement occurs. Treating idea infringement as a legal ground will lead to the monopolisation of ideas.

This is not just an interesting and new case, but a very bold and risky step taken by the court. This may lead to clarity among the consumers regarding a particular brand, like “WOW MOMO” in the present case, to identify the brand due to its name and constant use. Allowing WOW BURGER to sell similarly is going to create confusion among the consumers who had relied on “WOW MOMO” for a long time. Consumers may trust the “WOW BURGER” in the same manner, and this may divert the profits and split the hard-earned brand value to the respondent.

Even after some time, even if the consumers gain awareness of the fact, the initial confusion that once prevailed would have yielded some economic benefits to the respondent. Therefore, the idea leads to a shift from “strict linguistic analysis” to “marketplace perception.” Now, instead of focusing on “the meaning of the word”, the analysis will depend on focusing on “the impact of the mark on the consumer’s mind.” In a few cases, too, the courts have focused on the consumer’s psychology rather than terminology, such as the *Blenders Pride*⁵ case and *Mankind Pharma*⁶.

Still, the question persists whether relying heavily on the consumer’s psychology is going to yield any real benefits to the owner of the mark and other users or merely increase the burden of the court to check whether “Crispy Fries” infringes the mark of “Crispy Dosa”.

⁴ Para 41 of the judgment.

⁵ *Pernod Ricard India (P) Ltd. v. Karamveer Singh Chhabra* (“Blenders Pride” v “London Pride”), 2025 SCC OnLine SC 1701.

⁶ *Mankind Pharma Ltd. v. Novakind Bio Sciences Pvt. Ltd.*, 2023:DHC:5653).

The step by the Hon'ble court is good for protecting the trade mark's owners; however, by over-focusing on this, the court has put at stake three things in particular:

- The balance between the public's freedom to create and compete will be lost.
- Ideas are considered a source, and restraining the source in the name of protection will leave no space for creativity.
- Various small vendors who sell not for branding but for livelihood do not possess much creativity, and it is quite common for them to use words like "wow", "yummy" or "crispy", etc., to sell their items or name their carts. Labelling them as infringers will not be a good thing for them, which seems like attacking a small seller's identity in a local area, while protecting the bigger enterprises for their "creativity" of using colloquial words with a food item.

In this way, the focus of the court here seems less like promoting creativity and leans more towards protecting brands' identity. The further journey of "idea infringement" will now depend on further rulings on such issues and the Supreme Court's way of dealing with it.

Conclusion:

The case "*Wow Momo Foods Private Limited vs Wow Burger & Anr*" is a novel move in the field of IP, where a new theory is being considered, i.e., "idea infringement", where a certain idea can be protected for trade mark infringement and may be in future, even for infringement of other types of IP. The decision marks a significant shift in the trade mark jurisprudence of India from strict technical comparison to market perception and consumers' psychology.

On one side, the decision strengthens brand protection by recognising composite distinctiveness and addressing the risk of consumers' confusion, but, on the other side, by extending protection to branding concepts rather than merely expressions, the judgement risks monopolisation of common ideas and restraining free and fair competition, especially for small traders. Therefore, the judgment itself is a bold yet precarious development. Future judicial cases and interpretations by the courts will now determine the long-term impact of the judgment.