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Analysis

Butter, Goodwill, and an Absent Defendant: What the Delhi High Court Did Not Decide in the 'Benne' Dispute

The Delhi High Court's injunction in the 'Benne' dispute raises important questions about trademark exclusivity, acquired distinctiveness and the evidentiary basis of goodwill. Behind the protection of a young restaurant brand lies a larger question: when does a common word become a proprietary identity?

By Aaditya Bajpai • 20 November 2026

When a two-year-old quick-service dosa chain called Benne found a Delhi cloud kitchen operating as "Benne Delhi", it asked the Delhi High Court to stop it, and on 16 October 2026 walked out with an ex parte ad interim injunction ([CS(COMM) 1131/2026, before Justice Vikas Mahajan]. The order restrains the defendant from using BENNE, BENNE DELHI or any mark similar to the plaintiff's "in any form", whether as a trade name, domain name or social-media handle. An injunction over a restaurant name is unremarkable. What repays attention is what the Court was asked to monopolise, how little of it was contested, and how fast the goodwill behind it is said to have formed.

'Benne' and Secondary Meaning

'Benne' is the Kannada word for butter. The order records this, adding that restaurants use the word as a menu item for butter dosa, the staple of Bengaluru's darshinis. A word that names an ingredient on the very menu it appears on sits close to the descriptive floor of trademark law. Section 9 of the Trade Marks Act keeps such words off the register unless the trader shows the word has shed its ordinary meaning and come to identify a single source, i.e., acquired distinctiveness, or secondary meaning.

The Delhi bench keeps that threshold high and has declined to lower it for spenders. It refused protection to the slogan "One For All"on the reasoning that

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extensive use is not the same thing as secondary meaning, and it protected a common forename like "NEHA"only once distinctiveness in trade was actually proved. Indian courts have fenced off descriptive words before, but on proof that the word had, in trade, come to denote one source rather than the thing it describes, a different order of proof from "we are everywhere".

That inquiry is nowhere in the Benne order, for a plain reason, i.e., the defendant was not heard. The operative findings (paragraphs 45–46) are the familiar interim trinity, prima facie case, balance of convenience, irreparable injury, stated rather than reasoned. So, the proposition that a descriptive Kannada word has become the exclusive badge of one chain has, at this stage, been advanced by one side and accepted on a provisional view. That is how ex parte ad interim orders are meant to work. It is not a finding that "benne" has acquired secondary meaning, and nothing in the order should be read as one.

The Prior-User Shield in Passing Off

None of this makes the order weak, because the plaintiff's strong card is not distinctiveness but priority. It pleads use from April 2024, first in Bandra, now five outlets across Mumbai and Delhi NCR, while the defendant surfaces only in April 2026, and then on a 'proposed to be used' application. A prior user ordinarily defeats a latecomer, and the lack of registration is no obstacle, i.e., the plaintiff's marks are still pending, yet an unregistered prior user can hold the field in passing off, as the Court reaffirmed when it granted interim relief to the Max Mueller Bhavan institutes against a registered proprietor. The rights of a prior user are treated as superior to registration itself, and priority of use works as a shield only where it predates both the use and the registrationof the mark being asserted. Because the plaintiff's marks are unregistered, this is in substance a passing-off and prior-use contest rather than statutory infringement, a distinction the order glides over but the trial cannot. On prior use alone, the interim relief is defensible even if the harder descriptiveness question is parked for later.

Viral Goodwill: Measuring Reputation in the Fast-Casual Era

The genuinely contemporary feature is the evidence of goodwill itself. Turnover is pleaded at roughly ₹4.28 crore in 2024-25, rising to over ₹20 crore in 2025-26, a near fivefold jump, but the order leans at least as heavily on visibility, i.e. coverage by food publications and vloggers, and documented visits from

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Virat Kohli, Anushka Sharma, Deepika Padukone and Ranveer Singh. Influencer reach and celebrity footfall are being offered, and provisionally accepted, as proxies for the reputation that passing off exists to protect. That compresses a timeline courts once measured in years into about eighteen months. It is a fair reading of how brands are built now. It also smuggles in an assumption that will not survive a contested hearing unexamined, that being seen is the same as being recognised as a source. At trial the plaintiff will have to show not that "benne" became well-publicised, but that it came to mean this chain to the ordinary consumer rather than a style of dosa.

The distance between those two things shows up when the order is set beside its neighbours. Delhi courts restrain restaurant names at the interim stage all the time, the 'SOCIAL' chainobtained the same ex parte relief, and ITC secured an ad-interim injunction protecting 'Bukhara', a mark registered since the 1980s and judicially recognised as well-known. Benne asks for comparable protection on about eighteen months in the market and a word its own pleadings concede is a generic menu item. The relief may well be correct; the evidentiary foundation is a world away from a decades-old registered mark, and an order that does not mark that difference invites it to be tested.

Sweeping Restraints and Registry Realities

The width of the restraint sharpens the point. The injunction covers "benne … and its variants … in any form", as trade mark, trade name, domain name or handle. Read literally, it reaches a word the order itself calls a common menu item. Other darshini-style sellers who use 'benne' honestly and descriptively for butter dosa are not before the Court, but an order framed this broadly can chill them all the same. Reconciling "benne is an everyday Kannada word for a dish" with "benne belongs to one chain" is the knot the Court will have to untie once the defendant appears, and it is the kind of tension that has already divided Delhi benches on descriptive marks.

The registry picture is messier than the contrast the order draws, too. The plaintiff faults the defendant for a 'proposed to be used' filing in class 43, the restaurant-services class. Yet the plaintiff's own class 43 application rests on the same 'proposed to be used' basis and is itself marked 'Opposed'; its claimed use from April 2024 is carried by applications in other classes that were filed only in February 2026. The prior-use case therefore stands on pleaded commercial use, not on anything the register independently confirms, which is precisely the

material a contesting defendant would go after first.

There is a procedural tell worth noting as well. The plaintiff was excused from pre-institution mediation under Section 12A of the Commercial Courts Act on the footing that its injunction claim was 'plausibly urgent and genuinely contemplated'. Urgency resting substantially on a brand's own publicity sits a little awkwardly against the plaintiff's own account that it came across the defendant only through a casual internet search in August 2026, and moved two months later. That interval is exactly what a defendant reaches for when it applies to have an ex parte order vacated.

Shimow Hospitality v. Benne Delhiis less a statement of law than a snapshot of how interim trademark protection now runs, i.e., a young, heavily mediated brand turns digital visibility into pleaded goodwill, pairs it with a clean prior-use date, and secures a wide ex parte restraint over a descriptive word before the other side has said anything. The order holds comfortably on prior use. Whether it holds on exclusivity over "benne" itself depends on evidence the Court has not yet seen and a defendant it has not yet heard. The date to watch is 9 February 2027.

Read the Order Here – Shimow Hospitality Private Limited vs. M/S Benne Delhi Through Its Proprietor, CS (COMM) 1131/2026.

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