

goodwill earned by an honest business. In such cases, an injunction ensures that no one should present his goods and services to the customers as of another party with goodwill in respect of the same and seek benefit therefrom.³

2. It relied on the three principles known as the 'Classical Trinity,' which is used to establish passing off, *i.e.*:⁴
 - a. Applicant must first establish goodwill and reputation attached to his goods and services.
 - b. Applicant must show that the respondent's acts are likely to lead the public to believe that the goods and services offered by the respondent are goods and services of the applicant.
 - c. Applicant is likely to suffer or has suffered damage.
3. It held the Commercial Court had considered the law on the subject and the tests required for grant of injunction in case of passing of.
4. It adjudged that SII had developed the Trademark and was in prior user and the Plaintiff has not acquired goodwill.⁵ In establishing, if there is likelihood of causing confusion, it opined that:

*"The vaccine 'Covishield' produced by Serum Institute is not available across the counter. The vaccine will be administered through Government agencies. The buyer of the product 'Covishield' of Serum Institute is the Government of India. The administration of the vaccine is through an injection. The sale of disinfectant or hand sanitiser, though it may relate to the same field, that is, health care products, cannot be said to cause confusion in the mind of average consumers. The administration of vaccine through an injection is well known. It will be too farfetched to hold that there will be confusion in the average consumers' minds between the use of a trademark in a Government administered vaccine at designated places and over the counter sanitiser products. Visually also the products are different."*⁶

5. It also reiterated the observation of the Commercial Court:⁷

"There is one more facet to be considered to determine the balance of convenience. That 'Covishield' is a vaccine to counter Coronavirus is now widely known. A temporary injunction directing Serum Institute to discontinue the use of mark 'Covishield' for its vaccine will cause confusion and disruption in the Vaccine administration programme of the State. In this case, thus, the grant of an injunction would have large scale ramifications traversing beyond the parties to the suit."

6. The Commercial Court's Order was in line with the settled principles of laws governing injunction. The Plaintiff had not established a *prima facie* case against the Respondent. Hence, the High Court upheld the Order and dismissed the appeal.

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³ Paragraph 5 of the High Court's Order.

⁴ Paragraph 5 of the High Court's Order.

⁵ Paragraph 18 and 19 of the High Court's Order

⁶ Paragraph 22 of the High Court's Order

⁷ Paragraph 30 of the High Court's Order

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