SNIFFING OUT LOOPHOLES: REASONS BEHIND THE ELUSIVENESS OF THE “INSPIRED BY” PERFUME DUPE FOR INDIAN TRADEMARK LAW

by

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ABSTRACT

The rise of dupe culture has fundamentally changed how consumers think about luxury goods. In the context of social media, online shopping sites, and even online influencers, an entire new generation of consumers and merchants have embraced the basic concept that as long as a product does not feature a counterfeit logo or imitation packaging, but rather states that it was "inspired by" the original, then the product can be marketed without any issues. It is obvious. Contrary to fake products, dupes do not hide the fact that they are alternatives. Buyers are seldom in doubt that they are buying the original product. Transparency, therefore, is often assumed to place these products beyond the reach of trademark law.

However, the legal basis and origin of this assumption is quite precarious. Although the lack of deception will probably minimize the risk of trademark infringement, it cannot settle the question of trademark dilution, unfair competition, passing off, and using the reputation of the other brand. In other words, honesty about imitation is not always synonymous with legality. The legal response to such cases becomes highly complicated when companies use the identity, reputation and success of luxury brands in marketing products that replicate their commercial success and name but not the trademarks.

It has never been more clear than in the case of the booming dupe perfume market in India. Dupes are marketed with independent brand labels, but the goods are advertised as "inspired by" famous designer perfumes, providing customers with an olfactory experience at a fraction of the cost. This sector has become one of the most rapidly growing segments of the Indian personal care and beauty e- commerce industry operating on the Internet. However, despite the economic importance of the dupe business, no Indian court decision has ever analysed whether marketing of this kind constitutes trademark infringement, passing off, or some other unfair competitive activity. The lack of court cases has usually been treated as an informal approval of the practice. This Article argues that such a conclusion is misplaced.

In addition to not reflecting legal certainty, the absence of judicial pronouncements can be seen as the result of three structural features of Indian intellectual property laws working together at once. Firstly, the requirement for graphical representation in Section 2(1)(zb) of the Trade Marks Act, 1999 made it practically impossible to register scents as trademarks for decades, thus keeping the fragrances themselves out of the traditional trademark regime. Secondly, Section 13 of the Copyright Act, 1957 provides that unfixed sensory creation cannot be protected by copyright, preventing the fragrance compositions from having another means of intellectual property protection. Lastly, the law in India concerning comparison-advertising was formed on the basis of the law of commercial disparagement. The article traces the Trademark Registry's unprecedented acceptance, in November 2025, Of India's first olfactory trademark, filed by Sumitomo Rubber Industries for a rose fragrance applied to tyres, marks an important doctrinal development. However, the significance of this development for the perfumery industry is negligible. In essence, the trademarked scent is merely an arbitrary source identifier for tyres but not the very quality which the consumer seeks when buying a fragrance product. Therefore, the above registration has not helped to clarify the issue of whether the scent of a perfume product or marketing referencing it is capable of trademark protection.

Against this backdrop, this paper examines how Indian courts are likely to respond when confronted with the first major dispute involving dupe perfumes. It situates the issue within comparative jurisprudence, drawing on decisions such as *Coty, Inc. v. Excell Brands, LLC* in the United States and *L'Oréal SA v. Bellure NV* in the European Union, while analysing India's evolving jurisprudence on comparative advertising through cases including *Reckitt & Colman*, *Pepsi Co. v. Hindustan Coca Cola*, and *Dabur India Ltd. v. Colgate Palmolive (India) Ltd.* In light of these authorities, this article proposes a predictive model that would help determine whether or not the "inspired by" perfume marketing falls under the scope of legality in India. The paper concludes that despite the fact that the law is still uncertain in this regard, the remedies of passing off and infringement provided by Section 29(8) of the Trade Marks Act of 1999 constitute more plausible ways of protection than the current doctrine of commercial disparagement. It is in this context that the paper attempts to bridge a widening gap between the development of consumer markets and the legal system.

I. INTRODUCTION: THE UNPROTECTED ART

Perfumery occupies a distinctive position among the creative arts. Just as a composer creates a harmony by combining musical notes, the perfumer, who is usually called a "nose," combines the top, middle, and bottom notes to create a fragrance that evolves with time on the skin of the person wearing it. Such a comparison between perfume making and music/painting is not only literary but it involves experimentation and creativity, since each fragrance involves experimentation, technical knowledge, and judgment in order for the perfumer to know how natural and synthetic aromatic ingredients will be combined to create a distinct smell. Yet, although the process of perfume creation involves such an immense amount of creativity, the legal system treats perfumes in a rather paradoxical way. While the many commercial aspects of the perfume, name, packaging, and advertising, can each receive protection from the respective branch of intellectual property law, the actual fragrance, which makes up the unique feature of the perfume and represents the product of the perfumer's creativity, does not fall within the protection of the intellectual property systems.

Such a gap in the law has enabled the rise of the perfume dupe business in India. Fragrances, which are sold on online platforms as well as on social media sites, can be purchased at prices ranging from a few hundred rupees to less than that, while also being advertised explicitly as "inspired by" or having the same "DNA" as the luxury perfumes, which sell at prices in thousands of rupees. They are typically offered under unique independent brand names and unique bottle designs without any copying of the original design. However, the marketing approach followed by such businesses uses the comparison of their product with that of the luxury perfume in product description, comparison charts, and other promotional activities conducted by social media influencers. It is obvious that these companies try to gain commercially from the good name and reputation built by these perfume brands.

This growth has occurred against the backdrop of a rapidly maturing digital-first fragrance sector in India, in which at least thirty new perfume brands entered the market between 2018 and 2025 through direct-to-consumer channels and social media marketing. Investors tracking this sector have begun to treat heavy reliance on comparison-based marketing as a warning sign in its own right, since it is often taken to signal weak underlying brand differentiation rather than genuine product innovation. The commercial temptation to invoke a luxury competitor's reputation has therefore grown alongside the sector itself, even though the legal consequences of doing so remain untested in India.[1]

This article argues that this silence is not accidental nor indicative of practice's legality. It is the predictable consequence of three doctrinal features of Indian law working together: scent has never, until very recently, been treated as capable of trademark protection at all; copyright law's insistence on a fixed, tangible expression excludes scent from its subject matter entirely; and India's rich body of comparative advertising jurisprudence, built almost entirely around cases of product disparagement, does not map cleanly onto the very different fact pattern that "inspired by" marketing presents. Part II situates the dupe phenomenon within the creative economics of perfumery. Part III examines whether Indian law protects the scent itself, including a close analysis of the Trade Marks Registry's landmark November 2025 acceptance of India's first olfactory trademark. Part IV and Part V turn to the real battleground: the use of a rival's name in comparative marketing, and the disparagement doctrine that would have to be stretched, or set aside, to address it. Part VI analyses how the United States, the European Union, and Germany have confronted materially similar disputes. Part VII asks why India has not seen equivalent litigation, and Part VIII offers a predictive account of how an Indian court would likely reason if it finally did.

II. THE ART AND ARCHITECTURE OF A SCENT

An excellent fragrance can be best viewed as an olfactory composition. It is conventionally comprised of three sections: top notes which give the first and most volatile impression; heart notes which determine the overall character of the fragrance as the top notes disappear; and base notes which give the long-lasting foundation and base to the fragrance. In this traditional structure, perfumers mix different natural essences and aromatic synthetics in different quantities to achieve a unique olfactory combination. Perfume creation is a complex process of experimenting and achieving an olfactory formula. Although perfumers may have the same brief for a particular perfume, differences in the way the formula is achieved mean that independently created fragrances do not coincide even with similar perfumes.

This very quality is what has created the business opportunity for dupes to capitalize on. With the aid of modern techniques of analytical chemistry especially gas chromatography mass

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[1] Meha Agarwal and Palak Sharma, 'Chasing the Scent of India's Next D2C Breakout' Inc42 (17 March 2026) <https://inc42.com/features/chasing-the-scent-of-indias-next-d2c-breakout/> accessed 15 July 2026.

spectrometry (GC-MS), it is possible for competent perfumers to study the perfume and figure out most of the compounds that go into making up the aroma of the perfume with great accuracy. This information is then used to manufacture another perfume that smells almost exactly like the original one, using different and cheaper raw materials. It is worth noting that there is no stealing of the formula and/or trade secrets involved in this practice.

This practice sits on settled legal ground elsewhere as well. Commentary on the fragrance industry's long-standing reliance on secrecy observes that reverse engineering a lawfully purchased product through chemical analysis is generally permissible under trade secret doctrine, precisely because the information is derived independently from a product already in the public domain rather than obtained through breach of confidence or deception. What remains unlawful, on this view, is not the chemical analysis itself but selling the resulting formulation under the original's own name or mark, which shifts the wrong from trade secret misappropriation to passing off.[2]

It is equally important how the products are marketed. Duped fragrances tend to refrain from the use of registered trademarks of the brands in question as well as bottle design and packaging, thus avoiding any possible infringement of the trademark. The link between the luxurious scent and the dupe is made through the language used in marketing. The phrases such as "inspired by," "smells like," and "has the DNA of" are clearly marked on packaging, descriptions of the item for sale, and comparative charts where the designer perfume is identified.

The consequence is a fragrance industry in which the law protects almost everything about a perfume except the one thing that makes it valuable: the scent. This is not unique to India. It reflects choices embedded in the foundational structure of both copyright and trademark law, considered in turn below.

III. CAN A SCENT ITSELF BE PROTECTED UNDER INDIAN LAW?

Copyright protection is the most obvious candidate, and the quickest to eliminate. Section 13 of the Copyright Act, 1957, confers copyright only on defined categories of work: literary, dramatic, musical, and artistic works, cinematograph films, and sound recordings[3]. A scent fits

[2] Sarah B Cronin, 'Lost and Found: Intellectual Property of the Fragrance Industry: From Trade Secret to Trade Dress' (2015) 5 NYU Journal of Intellectual Property & Entertainment Law 256, 263.
[3] The Copyright Act, No. 14 of 1957, § 13 (India).

none of these categories on its face, and Indian copyright law, like most jurisdictions descending from the same doctrinal tradition, has generally been understood to require that a work be fixed in some tangible or material form capable of being reproduced and communicated. A fragrance, by contrast, is inherently transient. It dissipates from the moment it is released, cannot be notated in the way a musical score captures a melody, and cannot be reproduced from a written description with any precision. No Indian court has been asked to extend copyright to a scent, and the structural obstacles to doing so, definitional exclusion and the fixation requirement acting together, appear formidable enough that such a claim is unlikely to succeed if brought.

Trademark law seems to provide for a more feasible means of protection, even though the ambit is narrow. The Trade Marks Act, 1999 gives an inclusive meaning to the word "mark", stating that a "mark includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof." From a prima facie view of this definition, one can see that it is broad enough to cover signs that are not only visual in nature. But there are two conditions imposed under Section 2(1)(zb) of the Act which a mark must satisfy. Firstly, a mark must be able to be "represented graphically" and secondly, it must be capable of distinguishing the goods or services of one undertaking from those of another. This condition is further emphasized by Section 9(1)(a) of the Act, according to which the registration of a mark that cannot distinguish is prohibited. It is the condition of graphical representation that has been a major hurdle in registering a smell mark. For many years, the law in India and Europe has seen this as an almost impossible barrier to be crossed.

The European Court of Justice's decision in Sieckmann v. Deutsches Patent- und Markenamt held that a chemical formula, a written description, or a physical odour sample, whether alone or in combination, could not satisfy a representation standard demanding that a mark be "clear, precise, self-contained, easily accessible, intelligible, durable and objective"[4]. Indian practice, in the absence of any domestic authority, largely absorbed this reasoning by default: until 2023, no smell mark had ever been filed for examination in India at all.

That changed with the Trade Marks Registry's order dated 21 November 2025 accepting Sumitomo Rubber Industries Ltd.'s application for a "floral fragrance/smell reminiscent of

[4]Ralf Sieckmann v Deutsches Patent- und Markenamt, Case C-273/00, [2002] E.C.R. I-11737, ¶ 55 (ECJ, Dec. 12, 2002).

roses as applied to tyres", filed on 23 March 2023 in respect of tyres for vehicles. The Registry had initially objected under Sections 9(1)(a) and 2(1)(zb) for want of distinctiveness and graphical representation. On appeal, with senior counsel appointed as amicus curiae, the applicant relied on a scientific model developed by researchers at the Indian Institute of Information Technology, Allahabad, which plotted the rose fragrance as a vector across seven axes corresponding to recognised smell-families, floral, fruity, woody, nutty, pungent, sweet, and minty[5]. The Registrar accepted that this vector representation satisfied Section 2(1)(zb), reasoning that it captured the scent with sufficient scientific precision to enable both the authorities and the public to determine the mark's precise scope, and found the mark to be inherently arbitrary, since a rose scent bears no natural relationship to a rubber tyre, and additionally distinctive in fact given nearly three decades of continuous use since 1995.

The Sumitomo order is a genuine doctrinal turning point, and the first Indian authority to hold that a scent can, in principle, satisfy Section 2(1)(zb)[6]. But its relevance to the dupe perfume question is far more limited than it may first appear, for a reason the order itself implicitly recognises: the rose scent succeeded as a mark precisely because it is arbitrary, an ornamental badge of origin bearing no functional relationship to the product it is affixed to, much as a word or a colour might be. A fragrance company's own perfume presents the opposite case. There, the scent is not an arbitrary addition to an unrelated product; it is the product. This is exactly the distinction the United States Trademark Trial and Appeal Board drew in In re Clarke, the first case anywhere to uphold a scent as a registrable mark, for a floral fragrance applied to sewing thread and embroidery yarn. The Board was careful to note that it was not addressing "the registrability of scents or fragrances of products which are noted for those features, such as perfumes, colognes or scented household products"[7], precisely because a scent that constitutes the very feature consumers are purchasing is far more likely to be treated as functional, and functional features cannot serve as trademarks[8]. Nothing in the Sumitomo order disturbs this logic; if anything, the Registrar's emphasis on the scent's arbitrariness relative to tyres reinforces it. The upshot is that, notwithstanding Sumitomo, the scent of a perfume,

[5] In the matter of the trade mark application of Sumitomo Rubber Industries Ltd. for "Floral Fragrance/Smell Reminiscent of Roses as Applied to Tyres" (Registrar of Trade Marks, India, Order dated Nov. 21, 2025); the mark was recorded as "Accepted & Advertised" in the Trade Marks Journal No. 2236, dated Nov. 24, 2025.

[6] The Trade Marks Act, No. 47 of 1999, § 2(1)(zb) (India).

[7] In re Clarke, 17 U.S.P.Q.2d 1238, 1239 n.4 (T.T.A.B. 1990).

[8] See Qualitex Co. v. Jacobson Prods. Co., 514 U.S. 159, 164-65 (1995) (a feature is functional, and therefore ineligible for trademark protection, if it is essential to the use or purpose of the article or affects its cost or quality).

considered as a perfume, remains almost certainly unregistrable, and very likely unprotectable, under Indian trademark law today.

IV. THE REAL BATTLEGROUND: NAMES, TRADE DRESS, AND "INSPIRED BY" CLAIMS

If the scent itself cannot be protected, any Indian dispute over dupe fragrances would necessarily be fought over what dupe sellers actually reference: the original brand's registered word mark, invoked not on the product itself but in marketing copy, comparison charts, and product listings. The Indian dupes, either deliberately or through sound business strategy, have ensured that they structure their business in such a way that they are not easily open to the most obvious avenues of legal challenge. They tend to sell their scents using their own branded names and with distinctive packaging designs for the bottles as compared to that of luxury fragrance brands, thereby minimizing the danger of an infringement of trademark or trade dress issues. Instead, the common point between the two is the way the dupes market their products. The sellers will always indicate their products to be "inspired by" or "our version of" a certain luxury designer perfume, often complementing the description with a comparison chart showing which luxury scent has been replicated.

This fact pattern sits awkwardly within the existing structure of the Trade Marks Act, 1999. On one hand, Section 29(8)[9] stipulates that the use of a registered trademark in advertisements is an act of infringement of the said trademark in case there is an unfair exploitation of the trademark in question; it is against honest practices in industry or business; it prejudices the distinctiveness of the trademark or harms its reputation. On the other hand, Section 30(1)[10] stipulates that a third party can use a registered trademark in order to indicate the products or services of the proprietor, provided that such usage is honest in a commercial sense and does not unfairly exploit or harm the trademark.

Outside the courts, the Advertising Standards Council of India's self-regulatory code already speaks directly to this style of marketing. It requires that any comparative claim disclose the basis of the comparison in close proximity to the claim itself and in a legible manner, so that a consumer is not misled by the comparison alone. This code binds only ASCI members and carries no independent statutory force, but it shows that Indian regulators are alert to

[9] The Trade Marks Act, No. 47 of 1999, § 29(8) (India).
[10] The Trade Marks Act, No. 47 of 1999, § 30(1) (India).

comparison-based advertising as a category deserving scrutiny, even though no comparable framework has yet been tested against dupe perfume marketing specifically.[11]

However, in reality, these legal provisions have hardly ever been invoked in cases similar to the marketing of perfumes dupes. In India, for instance, such provisions have mostly been interpreted within the context of cases of comparative advertising involving competitive disputes between two FMCGs wherein one business has complained about criticism of its products in comparison to those of another firm via television or printed advertisement. Herein lies the uniqueness of the business approach of the marketers of perfumes dupes, in that they make use of the good reputation of luxury perfumes to market their products in direct competition with them.

V. INDIA'S COMPARATIVE ADVERTISING DOCTRINE, TRANSPLANTED

The bulk of Indian jurisprudence on comparative marketing arises from a distinct line of disparagement cases. In Reckitt & Colman of India Ltd. v. Kiwi TTK Ltd., the Delhi High Court held that a trader may declare its own goods the best in the market, even hyperbolically, but may not, while doing so, denigrate or defame a competitor's product[12]. The Calcutta High Court in Reckitt & Colman of India Ltd. v. M.P. Ramachandran refined this into a structured set of principles for courts to apply when deciding whether an advertisement amounts to mere "puffing" of one's own goods or actionable disparagement of a rival's[13]. The Delhi High Court's Division Bench applied and extended these principles in Pepsi Co., Inc. v. Hindustan Coca Cola Ltd., holding that Coca Cola's "Wrong Choice Baby" advertisements, which depicted a child dismissing a rival cola as a childish, inferior choice, crossed the line from permissible comparison into actionable disparagement, even without naming the rival brand outright[14]. Dabur India Ltd. v. Colgate Palmolive India Ltd. extended this logic further still, to "generic disparagement", holding that an advertisement need not identify the plaintiff's specific product by name to be actionable, so long as it is clearly identifiable and is denigrated in the process[15], a principle the Supreme Court had earlier anticipated in Hindustan Lever Ltd. v. Colgate

[11] Advertising Standards Council of India, 'The ASCI Code Guidelines' (ASCI) <https://www.ascionline.in/the-asci-code-guidelines/> accessed 15 July 2026.
[12] Reckitt & Colman of India Ltd. v. Kiwi TTK Ltd., 1996 PTC (16) 393 (Del).
[13] Reckitt & Colman of India Ltd. v. M.P. Ramachandran & Anr., 1999 PTC (19) 741 (Cal).
[14] Pepsi Co., Inc. & Ors. v. Hindustan Coca Cola Ltd. & Anr., 2003 (27) PTC 305 (Del) (DB).
[15] Dabur India Ltd. v. Colgate Palmolive India Ltd., 2004 (29) PTC 401 (Del).

Palmolive (India) Ltd. in recognising a trader's right to boast about its own goods while denying it any corresponding right to denigrate a competitor's[16].

The difficulty in applying this body of law to dupe fragrances is structural, not incidental. Every case in this line concerns denigration: the defendant's advertisement makes the plaintiff's product look worse. "Inspired by [X]" marketing does the opposite. It does not disparage the original fragrance at all; if anything, it flatters it, since the entire commercial appeal of the dupe depends on convincing the consumer that the original is desirable enough to be worth imitating. What the practice does instead is free-ride on the reputation the original has built, an entirely different species of wrong, closer to dilution or unfair advantage than to disparagement. Indian courts, having built their comparative advertising doctrine almost entirely around the disparagement fact pattern, have simply never been asked to develop the free-riding branch of Section 29(8)[17], the language of which, unlike the judge-made disparagement principles, does not on its face require that the plaintiff's goods be denigrated at all, only that the advertising take unfair advantage of the mark or be detrimental to its distinctive character or reputation. This is the doctrinal gap at the centre of the dupe fragrance problem: a statutory provision broad enough to capture free-riding, sitting almost entirely unused, alongside a rich body of case law that answers a different question.

VI. HOW OTHER JURISDICTIONS HAVE CONFRONTED THE SAME GAP

Other jurisdictions have faced structurally similar disputes and developed doctrine to address them directly. In Coty, Inc. v. Excell Brands, LLC, the United States District Court for the Southern District of New York considered a manufacturer of knock-off fragrances on a large scale basis. The defendant in the case promoted his products through use of the plaintiffs' house marks and product marks and by using packaging which was similar to the packaging of the luxury fragrance products. Although the products had a disclaimer indicating that the products were not authentic Coty products, the products as a whole were designed in such a manner that consumers would be able to relate the fake fragrances to the real ones[18]. The court held that the defendant's conduct constituted trademark infringement, trademark dilution, and false advertising, though it stopped short of counterfeiting, since the products were not literally sold

[16] Hindustan Lever Ltd. v. Colgate Palmolive (India) Ltd., (1998) 1 SCC 720.
[17] The Trade Marks Act, No. 47 of 1999, § 29(8) (India).
[18] Coty Inc. v. Excell Brands, LLC, 277 F. Supp. 3d 425, 431-33 (S.D.N.Y. 2017).

as the genuine article[19]. The case establishes that, at least in the United States, replicating a scent formula through independent reverse-engineering is not itself unlawful, but combining that replication with the unauthorised use of the original's exact marks and closely imitative trade dress is.

The European Court of Justice went considerably further in L'Oréal SA v. Bellure NV, a case arising from precisely the "comparison list" practice common among Indian dupe sellers today: Bellure sold smell-alike perfumes accompanied by comparison charts expressly matching each of its products to a specific L'Oréal fragrance by name. The Court held that presenting a competitor's goods, even truthfully, as an "imitation or replica" of a trade-marked product falls outside the protection the Comparative Advertising Directive affords to truthful comparisons, and that any unauthorised use of another's mark to achieve such a comparison is unlawful, regardless of whether it causes confusion, dilutes the mark, or tarnishes its reputation, because the advertiser has taken unfair advantage of the mark's reputation by riding on its coat-tails[20]. When the case returned to the English Court of Appeal to apply this ruling to the facts, Jacob LJ, while expressing considerable discomfort with the result, which he described as amounting to a form of monopoly over truthful comparative statements, nonetheless held that the comparison lists were unlawful free-riding under the Court of Justice's binding interpretation[21]. Notably, this doctrine requires no proof of confusion whatsoever; the wrong lies entirely in the unauthorised reference itself. Commentary on a 2023 ruling of the Hamburg regional court in Germany suggests a further extension of this logic, holding that even third-party media content describing dupe perfumes as "fragrance twins" of well-known brands, rather than the dupe seller's own advertising, could itself constitute actionable trademark infringement and unfair competition[22].

The comparative picture, then, is one in which both major Western jurisdictions have developed doctrine capable of reaching "inspired by" marketing without requiring proof that consumers were actually confused about the product's source, doctrine grounded either in dilution and false advertising, as in the United States, or in a free-riding theory built directly into comparative advertising law, as in the European Union. India possesses a statutory hook,

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[19]Id. at 460-64.
[20]L'Oréal SA v Bellure NV, Case C-487/07, [2009] E.C.R. I-5185, ¶¶ 41, 49 (ECJ, June 18, 2009).
[21]L'Oréal SA v Bellure NV [2010] EWCA Civ 535, [2010] R.P.C. 23, ¶ 49 (Eng. Ct. App.) (Jacob LJ).
[22]See Perfumes, IP and Dupes: Protecting Scent, Eliminating Odour, Mondaq (2025) (summarising a 2023 ruling of the District Court of Hamburg concerning an online publication's description of dupe fragrances as "fragrance twins" of established brands).

Section 29(8), broad enough to accommodate a similar theory. What it lacks is any judicial elaboration of that hook in a fact pattern resembling free-riding rather than disparagement.

VII. WHY INDIA HAS NEVER SEEN THIS LITIGATED

Several factors plausibly explain the absence of Indian litigation on this question, though none is conclusive on its own. First, until the Sumitomo order in November 2025, no fragrance house held, or could plausibly have held, a registered olfactory mark in India, foreclosing the most direct infringement claim before it could even be attempted, though this obstacle, as Part III argued, would likely persist even after Sumitomo given the functionality problem inherent in protecting a perfume's own scent. Second, India's dupe fragrance market, while large in aggregate, remains highly fragmented across a large number of small, often informally organised sellers operating through e-commerce marketplaces and social media, in contrast to the concentrated, nationally distributed defendant that made litigation economically rational in Coty v. Excell Brands. This fragmentation is compounded by a broader enforcement reality: independent industry analysis has identified perfumes and cosmetics as having the highest propensity for counterfeiting and illicit substitution among consumer goods sold in India, a finding that reflects the sheer difficulty regulators and brand owners face in policing the personal care sector generally. Luxury fragrance houses operating in this environment may reasonably conclude that the marginal enforcement gain from pursuing any single dupe seller is small relative to the cost of establishing a novel legal theory in an unfamiliar corner of trademark law.[23] Third, luxury fragrance houses may reasonably calculate that litigation would draw more public attention to the existence and scale of the dupe economy than quiet non-enforcement, a version of the publicity concern that has shaped enforcement strategy in other areas of luxury brand protection. Fourth and foremost, it appears that Indian fake sellers have designed their marketing techniques, whether purposefully or just through the logic of business, to evade engaging in the particular conduct that was found liable in Coty and Bellure. Unlike defendants in the cited cases, Indian counterfeiters do not use competitor's registered trademark on the packaging of their product and do not copy bottle designs in a way that would give rise to the usual claim for passing off. Rather, they resort to comparison of products via comparison tables on online trading platforms, and to marketing language of "our version of the classics"

[23] FICCI, 'Open House Discussion on Technological Innovations & Best Practices in Combating Counterfeiting Online' (FICCI, 6 June 2024) <https://www.ficci.in/press_release_details/4892> accessed 15 July 2026, summarising FICCI CASCADE, 'Hidden Streams: Linkages between Illicit Markets, Financial Flows, Organised Crime and Terrorism' (2024).

and "inspired by luxury scents". Their method is thus more akin to comparative advertising permitted by Indian law, and different from the reputation-based parasitism on the European market denounced in Bellure case.

VIII. WHAT WOULD HAPPEN IF AN INDIAN COURT FACED THIS QUESTION

If an Indian fragrance house were to litigate against a dupe seller, the strongest case would likely not be one of straightforward trademark infringement.. This is since, first of all, the perfume in question does not fall into the purview of trademarks at all, and secondly, the duping company does not tend to use the trademark of the luxury brand on its products. The better solution would be to combine the passing off case with the case under Section 29(8) of the Trade Marks Act, 1999. In order to prevail in a passing off action, it is necessary for the claimant to prove three things, all of which are well known under the classic trinity, namely that it has built up goodwill in its mark, that the defendant has made some sort of representation that has led to consumer deception and finally that the consumer deception has caused damage or likely to cause damage to the goodwill of the claimant. However, as regards perfumes dupes, the proof of the misrepresentation itself poses a challenge. Dupes of luxury perfumes are sold using the own brand name of the dupes along with separate packaging and even with disclaimers such as "inspired by". It will, therefore, become a challenge to prove that consumers are likely to be confused regarding the source of the goods. Indian courts have, generally, required that there must be a likelihood of confusion regarding the commercial source of the goods and not mere association between the two products.

Section 29(8), however, offers a different, and doctrinally more promising, route. Its language, unfair advantage, contrary to honest practices, detriment to distinctive character, detriment to reputation, does not on its face require proof of confusion at all, mirroring the structure of the EU provisions applied in Bellure far more closely than it mirrors India's own disparagement case law. An Indian court willing to read "advertising" in Section 29(8) broadly enough to capture a seller's own marketing language, rather than narrowly, as confined to use of the mark on packaging or as a trade name, would have a statutory basis to find explicit "inspired by" comparisons unlawful even absent consumer confusion, particularly given Indian courts' demonstrated comfort, visible throughout the Pepsi and Dabur judgments, in drawing on English and European comparative advertising reasoning when domestic authority runs thin. Whether an Indian court would in fact read the provision this broadly, however, remains genuinely open, and is likely to turn on how the specific facts of the first such case are framed, an unfair-advantage argument modelled on Bellure, or a more conventional passing-off argument likely to founder on the confusion requirement.

IX. CONCLUSION

Perfumery is, in every meaningful sense, an art form, and a commercially valuable one. Indian law has nonetheless constructed an elaborate scheme of protection around every element of a fragrance except the fragrance itself: its name as a word mark, its bottle as a shape mark or registered design, its packaging as trade dress or artistic copyright, while leaving the scent, the product of the perfumer's actual creative labour, almost entirely outside the reach of intellectual property law. The Trade Marks Registry's acceptance of Sumitomo's rose-scented tyre mark in November 2025 is a genuine doctrinal milestone, the first Indian authority to hold that an odour can satisfy the graphical representation requirement, but it resolves a narrow question, the registrability of an arbitrary scent unconnected to a product's function, without touching the much harder question a perfume company's own scent presents.

What remains is an unresolved statutory provision, Section 29(8), sitting largely unused, and a large and growing dupe economy that has, so far, avoided the precise conduct that triggered liability in comparable litigation abroad. Given the scale and visibility of India's dupe fragrance market, and the doctrinal tools already available within the Trade Marks Act, 1999, litigation on this question appears less a matter of if than when. When it arrives, Indian courts will have to decide, largely as a matter of first impression, whether Section 29(8)'s unfair-advantage language should be read to reach the kind of explicit, reputation-trading comparison the European Court of Justice condemned in Bellure, or whether India's comparative advertising doctrine will remain confined to the disparagement fact pattern in which it developed. Until that question is answered, one of Indian intellectual property law's most conspicuous gaps, the complete absence of judicial guidance on the legality of the "inspired by" fragrance dupe, will remain exactly that: conspicuous, and empty.