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Strength for Today and Bright Hope for Tomorrow

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Name versus the Color



Do we buy *Cadbury's* chocolate for its purple color wrap or for its taste? Will we buy Cadbury's chocolate if the word *Cadbury's* is not written on the wrap? Will we buy any chocolate if it is not *Cadbury's* but it has the typical purple color of *Cadbury's* on its wrap?

Cadbury's has been doing its best to protect not only its name but also the purple color it so proudly uses on all its products from being used by other companies in their line of business. *Cadbury's* had claimed in an Australian Federal Court that the use of purple color on chocolate products by another small confectionery was “misleading and deceptive conduct that could cause customers to mistakenly grab the wrong chocolate bar,” *The Hindu*, Chennai reported, quoting news agencies.

It certainly is possible that we will make this error when we are in a hurry. But then it is also said that those who have eyes shall see.

The court did not agree with the contention of *Cadbury's* and let the smaller company continue to use purple color in their wraps. *Cadbury's* held on to its view that “information processing errors” are caused when other chocolate companies use purple.

In this judgment, we find that while **color** is very important, **linguistic label** is seen to present the strongest claim and recognition for the product. Shape, size, color, design,

and linguistic signs all come to characterize a trademark and a product, but the linguistic sign, if not submerged by the other features, seem to hold its own fort.



And yet, we Indians love Cadbury's next perhaps only to *amrit*. And so we will conclude that the proof of the pudding is in the eating!

Is *Peter Scot* really a Scot? Or Scotch?



Closer home the battle was between the *videshi* manufacturers of Scotch whiskey and a producer of Indian-made Foreign liquors (IMFL). Can a whiskey produced in India bear the name of Scot or Scotch, which possibly misleads consumers as to its origin? *Scot* and *Scotch* are undoubtedly Scottish. Is the *deshi* product “deceptively similar to ‘Scotch’ allegedly making the consumers to believe that the product had a Scottish connection,” as claimed by the Scottish distillers and reported by Indian news agencies?

While the Indian Registrar of Trademarks and the lower courts including the Madras High Court thought that the name similarity is too close to be approved as a trademark, luckily for the *deshi* product and the *deshi* producer, Khoday India Limited, the Supreme Court allowed the continued use of the trademark *Peter Scot*, presumably because the

foreign Scotch manufacturers were late in their objection to the use of the trademark. In other words, their objection was time-barred. May be the Scottish Scotch manufacturers were too tipsy to realize what was going on around them, and it cost dearly because it took time for them to recover from their tipsy conditions! Scotch has great impact over its lovers!

It appears that the prohibitive and restraining power of the undefined basic principle or characteristic of name similarity still is valid when it comes to naming products. Human business ingenuity will, however, continue to out wink this undefined characteristic!

Myanmar and India



We received strange but true news that in their helplessness to get solid support for Myanmarese freedom movement, some in Canada have embarked on an unusual campaign of sending ladies' underwear to the generals who rule Myanmar with an iron fist. Thousands of poor people were washed away in the floods and storm in Myanmar and the generals seemed to have been more interested in maintaining their comfort and decorum. "Panties for Peace" movement leader in Canada said, "Like all other cultures, there was a superstitious fear of female undergarments in Myanmar. Its military junta fears that any contact with panties will spell disaster for them. So ours is a non-violent method to force change in Myanmar."

Myanmar and India have a long history of association: Buddhism, common borders, Indian communities of Tibeto-Burman origin, Indian settlers in Myanmar, and Indian fascination for Myanmar diamonds, teak, and so on. India and Myanmar were earlier part of the same British India Government. A large number of Indian mother tongues comes from the family of Tibeto-Burman family of languages. The ideology of Non-Alignment united India and Myanmar closely in the recent past. Indian National Congress in its founding session held in Bombay in December 1885 had passed nine resolutions. The seventh resolution protested against the annexation of Upper Burma and the proposal to incorporate it with British India. However, in its session after fifty years, Indian National Congress protested against the separation of Upper Burma from British India. Indian political opinion had already adjusted itself to the recognition that Burma and India were similar in many ways.

It is good to read that “India offered to repair Myanmar’s famous Shwedagon Pagoda, or Golden Pagoda—damaged by cyclone Nargis on May 3—during Sunday’s pledging conference where 52 countries promised rehabilitation and reconstruction aid to Myanmar. India’s offer is considered a diplomatic coup . Shwedagon is Myanmar’s most revered Buddhist shrine and is believed to house eight strands of Gautam Buddha’s hair,” *Times of India* reports.

But for a still larger benefit for the people of Myanmar, India could have done better here: advancing the case for freedom and democracy.

Unfortunately in recent years, India’s policy, motivated more by the self-interests of affluent classes generated by globalization, than by a genuine interest to be a torchbearer of freedom around the world, has not been dynamic enough to help Myanmar to achieve their democratic and human rights within their sovereign nation. Languages, literatures, common borders, shared linguistic and cultural communities, and religious values bind us. It is time that Indians help Myanmar in their quest for freedom from the rule of the military junta.

Nepal’s Shining Example

Nepal has become a shining example of people’s will prevailing over anachronistic institutions. We celebrate with great enthusiasm and admiration the developments in Nepal. Hard-working Nepali people are known for their proud heritage and freedom-loving characteristics. We believe that democracy in Nepal is good for all, in particular for India and South Asia. Indian and Nepali statesmanship will develop better understanding of and the need for diversity in the neighborhood.

Rationing and State Control over Personal Naming Processes

We have all the freedom in the world to name our children and pets in any way we want. Amir Khan named his dog after Sharukh Khan, the King of Hindi films and Bollywood. Earlier, some decades ago, Sivaji Ganesan, a popular and talented actor of Tamil cinema, named his dog Padmini. Padmini was Sivaji’s heroine in many of his films.

People in India, in general, do not like dogs to be named after them, especially if there is already some misunderstanding in the air between the owner of the dog and the person after whom the dog is named.

Unusual personal names are very common in every part of India, from the tiniest hamlet to the largest metropolitan city. Some are funny and some are frightening names. But, then, we all have the freedom and we do enjoy exercising it at least insofar as personal names are concerned. Names of cine actors, political leaders, popular thieves and robbers have all helped the growth of our imagination in the naming process in India.

But now, a judge of the Delhi High Court has made an unusual suggestion that the "Legislature should take cognizance of such names [such as Judge Chagla, Prime Minister, Chief Justice, etc.] and make appropriate law so that people do not start naming themselves or their sons and daughters with designations of high positions and in the garb of having such a name, one may start cheating innocent people." He recommended this step in order "to check the possibility of misuse of high designations." I only hope that the legislatures will not listen to this counsel from the learned judge. Naming is our birthright! Indian history attests to the tragic fact that in the past Dalits in certain parts of the country were ruthlessly denied the freedom of choice of names.

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