

**CASE ANALYSIS**

## **Supreme Court of Nepal on Trademark Infringement:**

Center Fruit vs Perfect Center Fillz Case Explained (Case No. 077-CI-0301)

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This case analysis examines the Supreme Court of Nepal's landmark ruling in the trademark infringement dispute between Perfetti Van Melle S.P.A. ("Center Fruit") and Perfect Foods Pvt. Ltd. ("Perfect Center Fillz"). It details how the Court protected well-known marks through acquired distinctiveness, assessed likelihood of consumer confusion, and aligned domestic law with international obligations under the Paris Convention and TRIPS Agreement



## Context

1. This case involves a trademark dispute between an Italian multinational confectionery company, Perfetti Van Melle S.P.A., (the “**Appellant**” or the “**Perfetti**”) and a Nepalese manufacturer of similar products, Perfect Foods Pvt. Ltd.,(the “**Respondent**” or the “**Perfect Foods**”). Perfetti has been selling chewing gum and filled candies in Nepal under the trademark CENTER FRUIT, ( the “**Center Fruit**”) which it claims has become widely recognised due to long and continuous use.
2. Perfect Foods attempted to register the trademark *Perfect Center Fillz*, along with a logo, for similar confectionery goods. Perfetti objected on the ground that the Respondent’s proposed mark was deceptively similar to its own, especially because it incorporated the dominant element “Center” and reproduced the structure of Perfetti’s well-established mark of *Center Fruit*.
3. The Department of Industry (the “**Department**”) rejected Perfetti’s opposition, and the Patan High Court upheld this decision of the Department. Perfetti then sought revision before the Supreme Court, arguing that the upheld decision had failed to properly apply Nepalese trademark law and international obligations relating to the protection of well-known marks.

## Facts

4. Perfetti asserted that it has used the *Center Fruit* mark since 2005 and has registered it in several countries, including Nepal and India. It maintained that the mark had become well known internationally and domestically, and that laws of Nepal, together with *Article 6bis of the Paris Convention for the Protection of Industrial Property*, as enforced through the Treaty Act, 2047 (1990) requires special protection of well-known marks. Perfetti argued that the Respondent’s mark, *Perfect Center Fillz*, copied the essential portion of its own mark and would mislead consumers, particularly because the goods were identical and offered in the same market. It contended that adding the word “Perfect” at the beginning and the descriptive term “Fillz” at the end did not change the overall commercial impression.
5. Perfect Foods disputed these claims. It argued that its mark differed in both wording and appearance. The word “Perfect” referred to its company name, while “Fillz” described that the product contained a fruit filling. It also maintained that “center” and “fruit” are descriptive words that should not be monopolized by any single company. The Respondent pointed to differences in colour, design, and presentation and insisted that ordinary consumers would not confuse its product with Perfetti’s.
6. After reviewing the submissions, the Department of Industry accepted the Respondent’s arguments and quashed the Perfetti’s petition. The Patan High Court later upheld this decision, upon which Perfetti filed a revision petition to the Supreme Court of Nepal.

## Decision

7. The Supreme Court set aside the decisions of the Department of Industry and the Patan High Court and decided in favor of Perfetti.
8. The Supreme Court noted that although the words “center” and “fruit” may ordinarily be descriptive, Perfetti’s long and consistent use had made the combined term *Center Fruit* distinctive. The Supreme Court further held that the Respondent had reproduced this essential element, and that the addition of the words “Perfect” and “Fillz” did not lessen the likelihood of confusion among the consumers.

## Analysis

### Distinctive Character of the Marks

9. The Supreme Court first examined the nature of the words used in the competing trademarks. It accepted that descriptive or generic words, taken individually, usually cannot be monopolized. However, the Supreme Court explained that such words can become distinctive when consumers begin to associate them with a particular business. The expression *Center Fruit* had been used for almost twenty years by Perfetti and had become widely recognized in its confectionery products. Through this long and continuous use, the term had acquired distinctiveness and was therefore entitled to strong trademark protection.

### Evaluation of Likelihood of Confusion

10. The Supreme Court then considered whether consumers would be likely to confuse the two marks. It assessed the visual, phonetic, and conceptual similarities between them. Although the Respondent argued that its packaging, colours, and designs were different, the Supreme Court emphasized that the key point of comparison is the verbal element of the marks, which is central in identifying confectionery goods. Both marks were used on the same types of products, sold in the same kinds of shops. Because confectionery goods are inexpensive and purchased quickly, customers often rely on their general impression rather than on close inspection.
11. The Supreme Court held that a consumer encountering the mark *Perfect Center Fillz* could easily believe that it was connected to or produced by the company behind *Center Fruit*. The presence of the word “Fillz,” which merely described that the candy contains a filling, did not lessen this likelihood of confusion.

### Application of Domestic and International Trademark Principles

12. The Supreme Court further explained that Section 18(1) of the Patents, Designs and Trademarks Act must be interpreted in harmony with Nepal's international obligations, particularly the Paris Convention and the TRIPS Agreement. These agreements require Nepal to ensure strong protection for well-known marks and to prevent the registration of trademarks that could deceive or confuse consumers.
13. By reproducing the essential element of Perfetti's well-known mark, the respondent's mark conflicted with both domestic law and these international standards. The Supreme Court found that the Department of Industry and the Patan High Court had not properly considered the well-known status of *Center Fruit* or the legal implications arising from Nepal's treaty commitments.

### **Conclusion**

14. The Supreme Court's ruling clearly establishes that the combined expression "*Center Fruit*" had, through long-term use and consumer recognition, become a distinctive and well-known mark deserving protection. By finding that the Respondent's mark "*Perfect Center Fillz*" appropriated the essential element of this well-known sign and created a real likelihood of confusion, the Court set aside decisions that refused registration of the impugned mark.
15. This judgment strengthens the legal framework for protecting well-known trademarks in Nepal (although Perfetti trademark was also registered in Nepal locally), reinforces the requirement that domestic law be interpreted in accordance with international obligations, and serves as an important reminder that even seemingly descriptive terms can acquire strong distinctiveness through use.
16. It also signals to businesses that adding minor variations to an established mark will not excuse imitation and that adopting similar marks for identical goods risks legal rejection.

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