



# National boundaries insufficient to allay TM confusion in the age of the internet

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*Aurangabad Bench of the Bombay High Court dismisses appeal against the order of the district court in Mayo Foundation matter at admission stage itself. "Close proximity" of business and use of trademark in the same field raises risk of confusion.* We begin with a recap. Aurangabad district court had [passed an order](#) injuncting the defendants from using the MAYO or similar marks. In so doing, for the first time had the trademark rights of Mayo Foundation – parent of the world famous Mayo Clinic – been recognised in India. That order was appealed before the Aurangabad Bench of the Bombay High Court.

## At this appeal

The high court noted that from India hundreds of students had studied at Mayo Clinic and nearly 2000 patients had availed of Mayo's services between 2011-2015 alone. The number of visitors from India to Mayo's websites had increased at a phenomenal rate as well. It took cognizance of the fact that the trade name/mark being used by the appellants (earlier, the defendants) was identical to Mayo's, which has had a global presence for over 100 years. It also took note of the fact that though the appellants had applied for registration of the 'MAYO' trademark in India, their applications had either been abandoned or opposed. The court opined that due to the visual and phonetic similarity of the marks used, ordinary customers would be confused and befall the impression that the products of the appellants actually emanated from Mayo. The court also made some other pertinent observations:

1. **Relating to the same field** – Though the trademarks of both Mayo and the appellants were for different classes of business, they related to the same field, medical.
2. **"Close proximity"** – There was a close proximity between the services offered by Mayo and the trade of the appellants. The business relating to the services as well as goods were related businesses.
3. **Area of business** – It is very easy for any person to learn about the facilities provided by Mayo on the Internet; just as easy it is also to purchase articles online. "Due to development in the information and technology, the whole world came under one roof. Therefore, distinction cannot be made in regards with the trade in one country and in multiple countries. In such circumstances it cannot be said that the area of the business of the plaintiff [Mayo] is restricted to the USA and it has no connection with the business in India, as due to Internet the whole world comes on a finger point."

The court concluded that the district court had passed a well-reasoned order and found no substance in the appeal, dismissing it at the stage of admission itself. *Manu Kagliwal & ors v. Mayo*



*Foundation for Medical Education & Research; before the Aurangabad Bench of the Bombay High Court; order dated 7.9.2017*

