

LANDMARK TRADEMARK JUDGMENTS IN PHARMA: A COMPREHENSIVE COMPENDIUM

The pharmaceutical industry stands as a critical pillar of modern healthcare, dedicated to the research, development, and production of life-saving medications and therapies. It is a dynamic and rapidly evolving sector, driven by constant innovation and a commitment to improving global health outcomes. Within this ever-expanding landscape, trademark registration emerges as an indispensable element that plays a pivotal role in safeguarding the interests of pharmaceutical companies. In an industry where breakthrough drugs and treatments are meticulously crafted through extensive research and development, protecting the distinct identities of these products is of paramount importance. This is precisely where trademark registration comes into play. By securing trademarks for their pharmaceutical brands, companies can not only establish a unique and recognizable identity but also gain legal exclusivity, thereby preventing unauthorized use and imitation by competitors. This protection extends to the distinctive names, logos, and other branding elements associated with pharmaceutical products, enabling companies to build trust with consumers, assure product quality, and maintain a competitive edge in an environment marked by rigorous regulatory standards and fierce competition. This compendium highlights significant judgements on trademark infringement in the pharmaceutical industry and the legal stance adopted by the judiciary on the interpretation of the law.

DECEPTIVELY SIMILAR MARKS

WYETH HOLDINGS CORPORATION ANR VS. BURNET PHARMACEUTICALS (P) LTD (AIR 2008 Bom 100)

Brief Facts:

The infringement and passing off suit was filed by Wyeth Holdings Corporation, the Appellant in this matter. Since the year 1946, the Appellant owns the

trademark “**Folvite**”, a medicine used for prevention of vitamin deficiencies and anemia. Burnet Pharmaceuticals Pvt. Ltd., the Defendant in the aforementioned matter, decided to rename their medication “**Folacid**” to “**Fol-V**”, due to which the Appellant filed a suit against them. One of the Appellant’s arguments was that the mark “**Folvite**”, which belongs to the Appellant, has acquired a substantial reputation and the likelihood of the Defendant changing its product to “**Fol-V**” can cause confusion with the consumers. Further, the Appellant submitted that the Defendant has not provided any clear explanation for the change in the name to “**Fol-V**” and hence creating a sense of suspicion. The Appellant placed emphasis on the landmark *Cadila Healthcare Ltd. Vs. Cadila Pharmaceuticals Ltd.* {[2001]2SCR743} judgment in which the court had held that a stricter approach needs to be adopted in pharmaceutical matters in order to protect the public and consumers from lethal consequences of deceptively similar products. The Defendant argued that the Appellant’s mark “Folvite” consists of “FOL” which is derived from the common element “Folic Acid” and “VIT” from the word “Vitamin” and that a larger reliance should be put on uncommon elements such as the letter “E”. The Defendant further argued that the judgment of Supreme Court in *Cadila Health Care Ltd. v Cadila Pharmaceuticals* is not applicable to all classes of medicinal products but only to those where both the drugs are meant for curing the same ailment but the compositions are different, but in the present case, both the composition of both the drugs are same.

Issue:

The issue before Hon’ble Bombay High Court was if the Defendant’s mark “**Fol-V**” is deceptively, phonetically and visually similar, to the Applicant’s mark “**Folvite**”?

Decision:

The Court passed the judgment in favour of the Appellant. The court dismissed the defendant’s argument that FOLVITE should be viewed as a mixture of “FOL” and “VIT”. The Court ruled that the mark’s validity cannot be questioned as long as it remains on the register. The court also noted that the defendant had originally used the term Folic acid, which has since been altered to FOLV, a mark that could cause consumer confusion. An excerpt from the Judgment:

“It would be inappropriate for the Court to apply a stricter standard only to a particular class of medicinal preparations. If the Court were to do this, it would have to make artificial distinctions from case to case based on whether or not the Court considers that a confusion arising out of the medicinal product in issue may or may not have disastrous effects on health and life. Such an approach is impermissible.....Undoubtedly, where the competing drugs are meant to cure the same ailment but the compositions are different, mistaking one for the other may result in deleterious consequences. But, merely because the two competing marks are used for drugs with the same composition that would not justify applying a lower standard of scrutiny. For, even in such a case, the public interest lies in protecting the consumer against an unwary purchase of a deceptively similar product”

FDC LIMITED VS.NILRISE PHARMACEUTICALS PVT. LTD. (CS (COMM) 427/2022)

Brief Facts:

The Plaintiff is the registered user of the trademark "**ZIPOD**" was coined in 2004 and has been in use since 2007. The Mark is used for Cefpodoxime-based antibiotic and antibacterial medications. The medication is used to treat illnesses such ear infections, sinusitis, pneumonia, and cystitis. The aforementioned goods are offered as tablets, dispersible tablets as well as dry syrup. Whereas, the Defendant's mark is "**ZOYPOD**" which contains the ingredient Cefpodoxime Proxetil. The Defendant is a registered user. The Plaintiff filed a suit against the Defendant in 2022, when they were made aware of the mark "**ZOYPOD**".

Issue:

The question before the Court is whether the Defendant's mark "**ZOYPOD**" is deceptively similar to the Plaintiff's mark "ZIPOD" under Section 11(1) of the Trade Marks Act, 1999?

Decision:

The Court allowed the Application and held the marks to be deceptively similar and held:

“...Since the products in question are medicinal products, in my opinion, the test to be applied needs to be far stricter than the one applied to other goods, as any confusion would result in public injury.

43. In the present case, since the defendants have not been able to satisfactorily show that they are the user of the impugned mark since 2014, and even otherwise would be the later entrant into the market, and the two marks are phonetically and visually similar, the use of the impugned mark of the defendants “ZOYPOD” is liable to be restrained.”

DECEPTIVELY NOT SIMILAR

KALINDI MEDICURE PVT. LTD. VS. INTAS PHARMACEUTICALS LTD. (2007 (34) PTC 18 (Del.)

Brief Facts:

In this matter, the Plaintiff filed an interim injunction in a suit against the defendant. The marks in question are “**LOPRIN**” and “**LOPARIN**”. The Plaintiff is the registered user of “**LOPRIN**” which is used for a drug that is used for treatment of cardiological problems and as an anti-platelet drug for prevention of coagulation and adverse cardiac arrests whereas the mark “**LOPARIN**” is used by the Defendant for a drug that is used in emergencies, especially in the ICCUs.

Issue:

The question before the Delhi High Court is whether the marks are deceptively similar to one another?

Decision:

The Delhi High Court vacated the application and rejected the grant of interim injunction and held that the marks are dissimilar to one another and laid down various reasons for the same:

- The Purpose of use: “**LOPRIN**” is used for ailments related to cardiology, whereas “**LOPARIN**” is used in emergencies only.
- Method of intake: “**LOPRIN**” is taken in a tablet form whereas “**LOPARIN**” is injected.
- Price: The difference between prices of both drugs is over 50 times.
- Sale: The Defendant generates Rs. 8 Crores worth of revenue in just 1 year.

PRIOR USE

NEON LABORATORIES LIMITED VS.MEDICAL TECHNOLOGIES LIMITED & ORS (CIVIL APPEAL NO. 1018 OF 2006)

Brief Facts:

The Appellant and Defendant are into manufacturing pharmaceutical products. The Appellant sought registration of mark “**ROFOL**” in 1992, which was granted in 2001. The Appellant did not use the mark until 2004. Meanwhile, the Defendant had introduced a generic drug in the market under the mark “PROFOL” in 1998. When the Appellant started using its mark “**ROFOL**” in 2004, the Defendant took the matter to City Civil Court, Ahmedabad, wherein the Court ruled in the favour of the Defendant as the Defendant was the prior user of the mark. The Appellant took the matter to Hon’ble Gujarat High Court, which too rejected the Appellant’s plea. The Appellant then appealed to the Hon’ble Supreme Court in 2006.

Issue:

The issue before Hon’ble Supreme Court was whether precedence should be given to the entity that registered the mark first or the prior user of a mark in the market?

Decision:

The Hon’ble Supreme Court passed an order in favour of the Defendant and held that the Defendant had a good prima facie case as its mark “PROFOL” was “first in the market” and hence was entitled to an ad interim injunction.

ORCHID HEALTHCARE & Ors VS.AGLOWMED LIMITED & Ors (MANU/BH/0384/2009)

Brief Facts:

The Defendant, on the basis of prior trademark rights in the mark “**AVASTIN**”, sued the Appellant for using the mark “**AVASTIN**” in respect of medicinal and pharmaceutical preparations and applied for an injunction to restrain it from using the mark “**AVASTIN**” for its products.

Issue:

The question before the Court was whether prior application amounts to more rights on a mark?

Decision:

At the trial stage, no party provided any significant papers to prove earlier usage of the mark. The Defendant had applied for the trademark "AVASTIN" at the Trademarks Registry earlier to the Appellant. However, the mere act of submitting a trademark application does not prove prior use. The placement of goods on the market for sale, which cannot be demonstrated solely on the basis of a trademark application but rather through advertisements, invoices, and interactions with dealers and retailers, must be used to determine the status of use. Similar to this, it was not possible to assume based solely on a survey report from ORG IMS Retail Audit that a product had been introduced to the market. The appeals court determined that a prima facie case must be proven before an injunction may be given. As a result, neither party received an injunction.

CONCURRENT USE

***ALKEM LABORATORIES LTD. VS. MEGA INTERNATIONAL (P) LTD.
(MANU/DE/2401/2009)***

Brief Facts:

The Plaintiff is a pharmaceutical company and had adopted the mark “**GEMCAL**” in 1999 and started using it in July 2000. The Respondent had been using the mark “**GEMCAL**” from November 2000 respectively for its medicinal and pharmaceutical preparations. The Plaintiff assert that they discovered the same mark being used by the Respondent in 2003 and, in response, filed a lawsuit for a permanent injunction, alleging trademark infringement and passing off of goods.

Issue:

The question before the Delhi High Court was pertaining to the prior, honest and concurrent use of the mark.

Decision:

It was determined that this was not a case of passing off, but rather of honest concurrent use after examining the annual turnovers related to the mark's use by both parties in relation of their respective pharmaceutical products. The court declined to order the defendant to stop doing something.

DERIVED FROM THE SAME INGREDIENT

SUN PHARMACEUTICAL LABORATORIES LTD. VS. HETERO HEALTHCARE LTD. & ANR (CS (COMM.) 185/2022 and I.As. 4718-19/2022)

Brief Facts:

In this matter, the Appellant is the registered owner of the mark “**LETROZ**” under which it sells a drug used for the treatment of breast cancer. The Defendant is also a registered owner of the mark “**LETERO**” under which it sells a drug for medication as well. Both the names are derived because the drugs contain an ingredient “**LETROZOLE**”, which is an international non-proprietary name (INN). The Appellant filed a suit against the Defendant before the Commercial Court on the grounds that the Defendant’s mark is deceptively similar to the Appellant’s mark. The Court refused the Appellant’s request for a permanent injunction against the Defendant by stating that the marks are not deceptively similar and they were both derived from a generic name. The Appellant then appealed to the Delhi High Court. The Appellant’s grounds were that since they were a highly reputed pharmaceutical company, the Defendant was trying to ride on their goodwill and reputation and was trying to confuse the consumers. The Defendant’s arguments were that the Appellant has been aware of the Defendant’s use of the mark “LETERO” for a while and has never questioned it before. Further, the name has been derived from an INN and hence there can be no question of infringement.

Issue:

The question before the Court was whether the Appellant qualifies for an injunction restraining the Defendant from adopting the mark "**LETERO**" and whether it infringed the Appellant's mark "**LETROZ**"?

Decision:

The Hon'ble Delhi High Court held that any name which is deceptively similar to an INN cannot be monopolized by one proprietor and there is no infringement of trademark since both the parties have derived their name from the ingredient "**LETEROZOLE**". The Delhi High Court relied on the judgment made in *Panacea Biotec Ltd. v. Recon Ltd.* and stated that when the derivation of a name is from an ingredient being used to produce a drug, the proprietor cannot claim exclusiveness for it.

KAVIRAJ PANDIT DURGA DUTT SHARMA VS. NAVRATNA PHARMACEUTICAL LABORATORIES (C AIR 1965 SC 980)

Brief Facts:

The Appellant was in the business of Ayurvedic pharmaceutical products under the name '**Navratnakalpa**,' whereas the Defendant produced medical products under the registered trademarks '**Navaratna**' and "**Navaratna Pharmaceutical Laboratories**". The Appellant appealed against the impugned order of the District Court as well as filed an Original Petition before the High Court in Cochin, submitting that the word "Navaratna" was commonly used by Ayurvedic physicians for medicines prepared out of the nine precious stones, and it's a generic word common to the Ayurvedic system of treatment and hence, the plaintiff cannot claim monopoly over it.

Issue:

The question before the Court was whether a commonly used word can be registered and monopolized by a sole proprietor?

Decision:

The Court held that one person cannot claim monopoly of a word that is commonly used for something unless an extremely strong evidence is produced for the same. Therefore the court denied injunction against the defendant.

ASTRA-IDL LIMITED VS. TTK PHARMA LIMITED (AIR 1992 Bom 35)

Brief Facts:

Plaintiff filed a lawsuit against the defendant, seeking a permanent injunction, for using the trademark "BETALONG," which is confusingly similar to the plaintiff's mark "BETALOC." The defendant claimed that he filed a pending application and launched the product for the treatment of angina pectoris and hypertension under the mark "BETALONG." The product, according to the defendant, is continually advertised and has built a solid reputation and goodwill. This medication is under schedule "H," and a pharmacist with the necessary license may sell it. Defendant claimed that the term "BETA" is widely used in this industry. Finally, the defendant argued that because he has been in the business since 1986 and the plaintiff filed the lawsuit in 1988, the plaintiff was tardy in approaching the court and should not be granted interim relief.

Issue:

The question before the Court is whether the Defendant's mark has infringed the rights of the Appellant?

Decision:

The get-up, color scheme, and other aspects of the competing strips and cartons were identical, and the defendants' mark was deceptively similar to the plaintiffs' registered trademark.

The defendants' claim that there could not be any deception because the medications required a doctor's prescription was not acceptable as the defendants' mark and phonetically similar to the plaintiffs' mark. The defendants were using the infringing mark and misleading cartons with the intention of leveraging the plaintiffs' reputation.

AS A WHOLE: (ANTI DISSCETION)

HOFFIMANN LA ROCHE & CO. LTD VS GEOFFREY MANNERS & CO. PVT LTD.

Brief Facts:

One of the vitamin formulations made by the appellant company had the trade mark "PROTOVIT" registered for it in 1946. The responding business submitted a request for DROPOVIT has registered its mark in connection with "medical and medications, chemicals, and pharmaceutical formulations. The request was accepted. After learning, the appellant It requested the respondent make changes to this trademark. The appellant in 1959, based on the respondent's denial requested the Registrar to correct the Register in an application removing the respondent's use of Trade Marks from within a trademark. As time went by, the appellant changed its request by that DROPOVIT was not a made-up word is a further justification. By letter dated August 5, 1961, the Joint Registrar denied the application request for correction made by the appellant. The appeal was filed by the appellant with the Bombay High Court. The respondent limited the designation of goods covered by the mark 'DROPOVIT' during the hearing of the appeal to "medical preparations and, substances containing principally vitamins." Both the Division Bench and the Single Judge ruled in favour of the respondent. The appellant presented a certificate to this court.

Issue:

The issues up for debate were:

- (i) whether the word "DROPOVIT" was confusingly similar to the word "PROTOVIT" and thus violated the Trade and Merchandise Act, 1958's provision.
- (ii) whether the word "DROPOVIT" was an invented or a descriptive word for the purposes of Section 9(1) of the Act.

Decision:

It was observed by the Hon'ble Supreme Court that it is not essential for a trade mark to have been "intended to mislead or intended to cause confusion" in order for it to be deemed confusingly similar to another. It is its potential impact on the typical customers that One needs to think about it. In order to achieve this, you must Use the phonetic and visual tests together. In addition, It's crucial to compare the marks as a whole. it is improper to mention something about just a part of a word due to the fact that that word's component is different from the equivalent word part in the other situation, there is no similarities that would be confusing. The real question is whether the entire trademark will likely lead to error, confusion, or deception in the minds of those who are accustomed to the current trademark. The two marks, "DROPOVIT" and "PROTOVIT," contained the terminal syllable "VIT," which was both descriptive and, as the evidence shown, common to the trade. It was challenging to maintain that one would be confused with or mistaken for the other if more attention were devoted to the unusual

ejection in the two terms. The words were so dissimilar that there was no plausible chance of confusion between the words from a visual or phonetic point of view. The letters "D" and "P" in DROPOVIT and the corresponding letters "P" and "T" in "PROTOVIT" could not possibly be slurred over in pronunciation. The fact that the preparations by their very nature were likely to be obtained on a doctor's prescription and that under Rule 61(2) of the Drug Rules of 1945 they could only be sold by licenced dealers meant that the likelihood of confusion would be significantly reduced.

It was inconceivable that someone who knew English would interpret the word "DROPOVIT" as meaning "DROP OF VITAMINS." The justification that "DROPOVIT" was a descriptor was absent from the appellant's initial request for rectification. Therefore, it was reasonable to assume that it did not strike even the appellant's legal counsel as being descriptive. True, words that were often used and recognised by common people who spoke English were used to create the word "DROPOVIT." However, the resulting combination created a new word, a freshly created word that did not immediately bring to mind the original words from which it was derived until one was taught or at the very least gave it some thinking. Thus, since "DROPOVIT" was a coined word, it was allowed to be registered as a trademark and was not subject to being "deleted from the Register on which it already existed."

MERCK KGAA VS GALAXY HOMPRO AND ANR

Brief facts:

A writ petition was filed under Article 226 of the Indian Constitution, the petitioner challenged the decision made by the Intellectual Property Appellate Board (IPAB) on June 12, 2009, which dismissed the petitioner's appeal against the decision made on June 28, 2001, by the Assistant Registrar of Trade Marks, which allowed the respondent to register a trademark in Class 5. The petitioner asserted that its company manufactures and sells pharmaceutical medication formulations. The petitioner's complaint revolves around the fact that it manufactures and sells a variety of medications with the suffix "BION." The respondent works in the same industry. On 3.10.1989, the respondent published an advertisement for the mark "RECIBION" to be registered. Since April 1, 1987, it claims to be in use. When the petitioner saw the aforementioned advertisement, he or she applied to raise concerns. The petitioner asserts that it registered a number of marks, including those for pharmaceutical preparations such as BETABION, POLYBION, and CEBION, with the Registrar of Trade Marks.

The petitioner asserts that the trade mark RECIBION, which the respondent is attempting to register in connection with a pharmaceutical and medicinal preparation, is confusingly similar to its mark CEBION, which also includes the suffix "BION" and is used to identify the petitioner's products.

The Assistant Registrar of Trade Marks, in an order dated June 28, 2001, denied the petitioner's objection. According to the Registrar, the marks "CEBION" used by the petitioner and "RECIBION" are not identical phonetically or visually. Additionally, the IPAB denied the petitioner's appeal in the contested order. The petitioner's counsel contended that the IPAB has broken down the in question marks into smaller pieces. According to the ruling, the prefix "RECI" used by the respondent is distinct from the prefix "CE" used by the petitioner and that the suffix "BION" has been widely used by many people, including the petitioner, in relation to pharmaceutical preparations and formulations. As the letter "R" is frequently slurred, learned counsel further argues that "RECEBION" and "CEBION" have comparable phonetic pronunciations. The attorney further argued that this Court had recognised that the threshold of bewilderment must be applied extremely strictly in cases of misleading likeness involving drugs. On the other hand, the respondent's counsel contended that the petitioner did not first utilise the trademark "BION." He asserted that Cipla first advertised "Calcibion" in 1949 and that it has been in use since August 25, 1942. In this regard, the advertisement's 1945 publication copy has been cited. Learned counsel further claims that a variety of other medications, including Mecobion, Rumbion, Embion, Pantabion, and Lycobion, are available for purchase on the market.

Issue:

One of the main issues in the petition was:

(i) whether the reasoning adopted and methodology resorted while deciding the issue of deceptive similarity between the two marks was correct?

Decision:

The Hon'ble Delhi High Court on the issue of deceptive similarity observed that in both of the in question marks share the suffix "BION." It is utilised in numerous additional marks owned by both the Petitioner and other market vendors. Given how frequently the suffix "BION" appears in the market, the IPAB continued by concluding that customers would be more interested in the prefixes

"CE" and "RECI" found in each mark. A portion of the petitioner's registered mark, specifically "BION," cannot be said to be protected. It is not sufficient to argue that two marks are confusingly similar just because a mark's prefix or suffix may be common, common to the trade, or public juris. In that case, it is necessary to evaluate the other components of the marks to determine whether the marks in issue can be deemed to be deceptively similar as a whole. The law grants the owner the sole right to use the entire trademark, not just a portion of it. To determine whether there is deceptive similarity between the marks, the entire mark must be compared. When viewed as a whole, the marks don't resemble one another in a confusing way on the phonetic or visual levels. It cannot under any circumstances be claimed that the two marks in question are structurally and phonetically similar and would consequently lead to confusion when considering the situation from the perspective of a man with average intelligence and imperfect memory and taking into consideration the pronunciation of an average customer lacking in the finer points of the English language. The prefix of both the marks in question differs noticeably, both in terms of how they appear and how they are said. This distinguishes the two words when they are combined into one word and spoken as a whole. On consideration of the various factors set out by the Supreme Court, as aforesaid, it is clear that there is no deceptive similarity between the marks in question.

AMRITDHARA PHARMACY VS SATYA DEO GUPTA

Brief Facts:

The respondent had submitted a trademark registration application for the mark Lakshmandhara for a pharmaceutical preparation, claiming sales mainly in the state of Uttar Pradesh and that sales outside of Uttar Pradesh were intermittent at best. The appellant objected on the grounds that it was the owner of the trademark Amritdhara and had exclusive propriety interest in the mark that the said mark was applied for similar medicinal preparations and that the mark had gained notoriety since 1901. The Appellant further claimed that the mark used by the Respondents was likely to deceive and create confusion.

Issue:

One of the main issues in the matter was whether the trademark Lakshmandhara was likely to deceive or cause confusion in the trade or to the purchasing public.

Decision:

The Supreme Court upheld the Registrar of Trademarks' determination that the competing marks Lakshmandhara and Amritdhara are identical and overturned an earlier ruling from the Allahabad High Court that was in direct opposition to it.

According to the Court, it is necessary to compare two competing marks from the perspective of a man with average intelligence and imperfect recollection. Further, according to the ruling, the entirety of the two marks, not just their individual components, shall be compared.

As held by the Hon'ble Supreme Court " A critical comparison of the two names may disclose some points of difference. but an unwary purchaser of average intelligence and imperfect recollection would be deceived by the overall similarity of the two names having regard to the nature of the medicine he is looking for with a somewhat vague recollection that he had purchased a similar medicine on a previous occasion with. a similar name. The trade mark is the whole thing the whole word has to be considered. In the case of the application to register 'Erectiks' (opposed by the proprietors of the trade mark 'Erector') Farwell, J. said in William Bailey (Bir- mingham) Ltd.⁸ Application (1) :

"I do not think it is right to take a part of the word and compare it with a part of the- other Word; one word must 'be considered as a whole and compared with the other word as a whole..... I think it is a dangerous method to adopt to divide the word up and seek to distinguish a portion of it from a portion of the other word".

PHARMACEUTICAL SUBSTANCE SOLD IN DIFFERENT FORMS

SUN PHARMA LABORATORIES LIMITED VS BDR PHARMACEUTICALS

Brief Facts:

Sun Pharma filed a suit in order to obtain a decree of permanent injunction prohibiting the defendants from manufacturing, marketing, selling, offering for sale, advertising, or directly or indirectly dealing in medicinal preparations bearing the mark Lulibet, which would constitute an infringement of the plaintiff's registered trademark Labebet. One of the contentions by the defendant was that the trade names LABEBET of the plaintiff and LULIBET of the defendant No.2 are both based on two different drugs/molecule. The plaintiff's product

LABEBET contains molecule Labetalol whereas defendant's product LULIBET contains Luliconazole. The prefixes in both the competing marks LABEBET and LULIBET are totally different, distinct structurally, phonetically and visually and represent the name of totally different drugs/molecule. Further the plaintiff's product LABEBET is in tablet form to be administered orally or intravenously in injectable forms for ailment relating to hypertension while defendant's product LULIBET is in cream, lotion or spray form which is essentially meant for application on skin having external use only. According to Sun Pharma, the trademark has seen widespread commercial use and has developed a strong reputation as a symbol of high-quality pharmaceuticals. It argued that BDR Pharmaceuticals' actions were illegal, unjust, and lacking in bona fides. The defendants were causing confusion and deception among stockists, dealers, pharmacists, customers, and physicians because the goods were medicinal preparations supplied through the same trade channels under a deceptively similar trademark.

Issue:

One of the issues before the Court was whether the difference between the two drugs in their mode of administration was enough to preclude confusion. The LABEBET drug by Sun Pharma is offered as an injection or tablet. In contrast, LULIBET products are solely intended for external usage and come in cream, lotion, or spray form.

Decision:

The Delhi High Court held that "It may be true that the fact that the plaintiff's drug is sold in the form of tablet/injectable form and the defendant's drug is sold through lotion/cream. However, it cannot be ignored that both the drugs are sold through a common retail shops. Further the similarity of the marks as noted above cannot completely rule the possibility of deception or confusion. As medicinal products are involved this court would have to adopt a stricter approach." The Court issued a definitive ruling in favour of Sun Pharma and prohibiting BDR Pharmaceuticals International Pvt. Ltd. and its contract manufacturer Intas Pharmaceutical Limited from using the trademark LULIBET or any other mark that is confusingly similar to Sun Pharma's trademark LABEBET.

ESSENTIAL/DISTINCTIVE FEATURES***MANKIND PHARMA LTD. VS NOVAKINDBIOSCIENCES PVT LTD***

Brief Facts:

To stop the defendant from using the plaintiff's family of trademarks, including "Defzakind," "Novakind Bio Sciences Private Limited," and "Kind," for pharmaceutical and medical products, the plaintiff requested a temporary injunction order against the defendant. The plaintiff claimed ownership of the "Mankind" mark with 78 registrations spread across 45 classes. The trademark was given well-known mark status by the Registrar of Trademarks. The plaintiff also held 120 registrations in class 5 where the suffix "Kind" was frequently utilised in a variety of marks, including "Dexakind," "Dentakind," "Metrokind," and "Moxikind." The plaintiff argued as a result that the suffix was an essential component of its trademarks.

Issue:

Whether a temporary injunction should be granted, restraining the Defendant/Respondent from using marks with word KIND as a part of their trade name/trade mark in relation to medicinal and pharmaceutical preparations;

Decision:

The court referenced the Supreme Court's ruling in the case of Cadila Health Care Ltd vs. Cadila Pharmaceuticals Ltd, in which it was determined that confusion between pharmaceutical items can be fatal. The court decided that the suffix "Kind" had become distinctive and was present on all of the plaintiff's marks. By using the suffix, the defendant had infringed the plaintiff's trademark in an effort to mislead and deceive the public into thinking that the products were owned by the plaintiff. The Delhi High Court held that "The use, by the defendant, of "KIND", as the suffix for its pharmaceutical product, therefore, prima facie, infringes the plaintiff's registered trademark and has the pernicious possibility of confusing or deceiving the public into believing the products of the defendants to be those of the plaintiff. The defendant is probably resorting to misrepresentation regarding the registration of its trademarks as well as the location of its registered office, on the body of its products. Given the fact that the products of the defendants are pharmaceutical products, this is a serious matter, and entirely justifies the prayer of the plaintiff for ad interim injunction."

NUTRACEUTICAL AT PAR WITH PHARMACEUTICAL PRODUCTS WHILE DECIDING SIMILARITY BETWEEN MARKS

SUN PHARMA LABORATORIES LTD. VS AJANTA PHARMA LTD.

Brief Facts:

Products for the treatment of diabetic retinopathy and age-related macular degeneration were the subject of the suit between the plaintiff and the defendant wherein the plaintiff prayed for an interim injunction. The rival trademarks were GLOEYE and GLOTAB, respectively. Both being eye medications. Section 22 of the Food Safety and Standards Act of 2006, referred to them as "nutraceuticals" because they contained plant extracts. The plaintiff's argument was that their registered mark, GLOEYE, had been in use since July 2005. The defendant was also manufacturing medications for diabetic retinopathy and age-related macular degeneration under the mark GLOTAB since 2013. In addition, the defendant's mark was also a registered trademark.

Issue:

Is the test for infringement and passing off for nutraceutical products the same as the test applicable for pharmaceuticals?

Decision:

The High Court determined that nutritional food supplements and nutraceuticals are similar to medications and pharmaceutical preparations. The argument that "in respect of medicines and pharmaceuticals deception and confusion need to be avoided" was based on *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.* When declaring that the standards established in the *Cadila* case applied in full to the current situation, the Court made the following observation: "The mere fact that these products are nutritional food supplements or nutraceuticals and are not pharmaceuticals in the strict sense is not convincing enough for adoption of a less stringent test. The mere fact that items are referred to as nutraceuticals because they contain elements from plants does not mandate that a lax standard be applied to them. Given that the effects of the products and their users are all comparable in nature, the test for pharmaceutical items would also apply to nutraceuticals. Applying the guidelines established in the *Cadila* case and holding that nutraceuticals should be handled on par with medicines, the Court determined that Sun Pharma was qualified for an interim injunction.

DECEPTIVE PACKAGING, SHAPE OR COLOUR OF MEDICINES

CIPLA LIMITED VS M.K PHARMACEUTICALS MIPR

Brief Facts:

Plaintiff sought interim injunction prohibiting the defendant from marketing or selling its drug "NORFLOXACIN" as oval, orange-colored tablets in blister packaging. The plaintiff claimed that it had been producing "NORFLOXACIN" Tablets under the trade name "NORFLOX-400" and marketing them in blister packaging having an oval shape and orange colour. The plaintiff argued that the duplication of the tablet's colour, form, and blister packaging was confusing consumers and allowed the plaintiff's medicine to be passed off as the defendant's medication.

Issue:

Whether the plaintiff is eligible for an injunction prohibiting the defendant from marketing its drug as oval-shaped orange-coloured tablets or packaging it in blister form.

Decision:

The Delhi High Court held that "Blister form of packaging of tablets is common and prevalent packaging. It is used in almost for 50% of tablets in the market. Plaintiff can have no monopoly over the particular form of packaging and cannot pray that no one else should pack its medicinal tablets in blister form of packaging. It is settled law that there can be no monopoly over colours. The plaintiff is in the field of manufacturing a wide range of medicines. Merely because plaintiff has started using a particular colour for its tablets plaintiff does not get monopoly over colour so that no one else can use that colour. The medicines are not bought by colours by the customers. There are thousand types of tablets available with Chemist for different ailments. All medicines are purchased at the advice of Doctors and they are sold on prescription. Even those tablets readily available without prescription, are known by their names. Shape of the tablets is not associated either with the quality of the tablets or with the nature of medicine. It cannot be said that because the shape of the plaintiff tablets and defendant's tablets being oval, it was going to create confusion in the minds of the customers. The distinctiveness of the medicines is in the name and not in the colour and shape. Even if there has been deliberate copying of similar colour and shape of the plaintiff's tablets that would not amount to passing off, since colour and shape are not indicative of the drugs neither they are associated with the trade mark."

As a result of this ruling, it has been determined that the name of the medicine and not its colour, shape, or packaging, is what makes it distinctive, even when deliberate replication takes place.

WHEN SCHEDULE 'H' DRUGS ARE AVAILABLE OVER THE COUNTER WITHOUT A DOCTOR'S PRESCRIPTION, THE PRESCRIPTION SUPPLIED BY THE DOCTOR IS OF LESS IMPORTANCE.

ASTRA IDL LIMITED VS TTK PHARMA LIMITED

Brief Facts:

The Plaintiff had filed a suit against the Defendant seeking a permanent injunction prohibiting the Defendant from using the allegedly infringing trade mark "Betalong" or any other trade mark confusingly similar to the Plaintiff's said registered trade mark "Betoloc" or infringing the Plaintiff's trade mark "Betoloc," registered under No. 326230 dated June 16, 1977 in Class 5 in respect of Pharmaceutical preparation or using the trade mark "Betalong" or any other mark confusingly similar to the plaintiff's trade mark "Betoloc" on pharmaceutical preparations in order to pass off the defendant's goods as the plaintiff's goods.

Issue:

Whether or not the Defendant has engaged in acts of infringement by adopting and using the similar trade mark "Betalong" in relation to the identical goods, as well as whether or not the goods bearing the Defendant's trade mark "Betalong" are being passed off and are likely to be passed off as and for the well-known goods of the Plaintiff sold under the trade mark "Betoloc."

Decision:

The defendants' claim that there could not be any deception because the medications required a doctor's prescription was not acceptable as the defendants' mark was phonetically similar to plaintiffs' registered trade mark. That the defendants were using the infringing mark and deceptive cartons with the intent of trading on the reputation of the plaintiffs. Further, that the doctor's prescription component is less necessary when schedule 'H' pharmaceuticals are sold over the counter without a doctor's prescription, the court found. However, if the packaging is different, the fact that the drug is a schedule 'H' drug should be taken into proper consideration.

IN CONCLUSION,

Intellectual property (IP) protection stands as a linchpin in the pharmaceutical industry, serving as a vital catalyst for innovation and progress. The robust safeguarding of patents, trademarks, and trade secrets empowers pharmaceutical companies to invest in extensive research and development, driving the creation of groundbreaking drugs and therapies. These protections not only reward innovation but also incentivize continued investment in life-saving advancements. Furthermore, IP protection fosters healthy competition, ensuring that the market remains a crucible of innovative solutions, ultimately benefiting patients worldwide. It bolsters the industry's ability to maintain rigorous quality control standards, enhancing consumer trust in pharmaceutical products. Moreover, IP safeguards encourage collaborations between academia, research institutions, and pharmaceutical companies, leading to a broader spectrum of medical discoveries. As the global population continues to face evolving healthcare challenges, the pharmaceutical industry's dedication to IP protection will remain pivotal in shaping a healthier and more prosperous future for all.