Sun Pharma Laboratories Limited vs Intas Pharmaceuticals Limited on 28 March, 2026

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on

\+ CS(COMM) 39/2023

SUN PHARMA LABORATORIES LIMITED

versus

INTAS PHARMACEUTICALS LIMITED .

Advocates who appeared in this case

For the Plaintiff : Mr. Sachin Gupta, Ms. Chanchalani, Ms. Prashansa, Pradhan, Ms. Diksha, Mr. Aj Aadarsh, Advocates.

For the Defendant : Ms. Bitika Sharma, Mr. Geor Ms. Ahaana Singh Rana & Mr. Mishra, Advocates.

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

1. The present Suit has been filed seeking a permanent injunction against infringement of the Trade Mark 'BEVETEX' ("Plaintiff's Mark"), passing off, unfair competition, dilution, rendition of accounts and damages.

2. The drug under the Plaintiff's Mark ("Plaintiff's Drug") is a scheduled drug used for treatment of breast cancer, non-small cell lung cancer and pancreatic cancer. The Defendant is using the Mark 'BEVATAS' ("Impugned Mark") for manufacturing and selling drugs for treatment of colorectal cancer, ovarian cancer, cervical cancer, lung cancer and recurrent glioblastoma ("Defendant's Drug").

PROCEDURAL HISTORY:

3. The present Suit was listed before the Court of the District Judge, Saket Courts, Delhi ("Trial Court") on 02.01.2018, wherein the learned Trial Court refused to grant an ex-parte ad-interim injunction on the ground that the Defendant's Drug is a cancer drug and it would not be in the

interest of the public to grant an injunction against the Defendant's Drug without granting the Defendant an opportunity of being heard. Accordingly, the Defendant was granted a period of one week to file its reply to the Application filed by the Plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 ("CPC").

4. After completion of arguments with respect to the Application under Order XXXIX Rules 1 and 2 of the CPC, the learned Trial Court vide Order dated 17.09.2018, dismissed the Application of the Plaintiff for grant of interim injunction on the ground that the Plaintiff had failed to establish a prima facie case for grant of an interim injunction.

5. On 17.12.2018, the learned Trial Court framed the following issues:

> 1. Whether the plaintiff is registered owner of the Trademark 'BEVETEX' in relation to medical and pharmaceutical preparations? OPP
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> 2. Whether the plaintiff is the prior and continuous user of the trade mark 'BEVETEX' in comparison to the defendant's use of the mark 'BEVATAS' in relation to medical and pharmaceutical preparations? OPP
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> 3. Whether the use of the impugned mark 'BEVATAS' by the defendant in respect to medical and pharmaceutical preparations amounts to infringement of plaintiffs registered trade mark 'BEVETEX'? OPP
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> 4. Whether there is any similarity or likelihood of confusion/deception between the marks 'BEVETEX' and 'BEVATAS'? OPParties
>
> 5. Whether the plaintiff is guilty of hoarding its mark 'BEVETEX'? OPD
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> 6. Whether the present suit has been instituted by the plaintiff without any authorization? OPD
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> 7. Whether the present suit suffers from delay, laches and acquiescence? OPD
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> 8. Whether the plaintiff has failed to disclose any cause of action to file the present suit? OPD
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> 9. Whether the defendant is the proprietor of the trade mark 'BEVATAS'? OPD
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> 10. Whether the defendant is the honest adopter and prior user of the mark 'BEVATAS'? OPD
>
> 11. Relief.

6. Aggrieved by the dismissal of the Application for interim injunction against the use of the Impugned Mark by the learned Trial Court, the Plaintiff filed an appeal before this Court bearing No. FAO 447 of 2018 ("Appeal"). The Appeal filed by the Plaintiff came to be dismissed vide order dated 09.01.2020. The Plaintiff preferred Special Leave Petition No. 3385 of 2020 ("SLP") against the order of dismissal of the Appeal. The SLP filed by the Plaintiff was also dismissed vide order dated 14.02.2020 with the direction that the learned Trial Court shall decide the Suit being uninfluenced by any observation by the High Court.

7. Thereafter, the Plaintiff revalued the Suit and, accordingly, the Suit was transferred before this Court for adjudication. After completion of final arguments on behalf of the Parties, the Judgment in the Suit was reserved on 01.12.2025.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF:

8. The learned Counsel for the Plaintiff made the following submissions:

8.1 The Plaintiff is a wholly owned subsidiary of Sun Pharmaceuticals Industries Limited, which started the business of marketing pharmaceutical products in the year 1978. The Plaintiff markets drugs and formulations in more than 150 countries of the world under its extensive range of distinctive Trade Marks and Trade Names and has been referred to in trade circles as 'SUN' and 'SUN PHARMA'. The Plaintiff has a consolidated annual turnover of over 3,00,00,00,00,000 globally. The Plaintiff is now ranked as No. 1 Pharma Company in India in a total of 11 specialties and is the world's 4th largest Generic Pharmaceutical Company.

8.2 The Plaintiff's manufacturing operations are focused on producing generics, branded generics, specialty, over-the-

counter products, anti-retrovirals, Active Pharmaceutical Ingredients ("APIs") and intermediates in the full range of dosage forms, including tablets, capsules, injectables, ointments, creams and liquids. The Plaintiff also manufactures specialty APIs, including controlled substances, steroids, peptides and anti-cancers. The Plaintiff has a highly skilled team of regulatory affairs specialists who are well versed with regulatory, policies and procedures around the world. The Plaintiff has a wealth of experience in the timely filing of dossiers as well as handling regulatory queries from both authorities and customers.

8.3 The Plaintiff's predecessor, Sun Pharmaceutical Industries Ltd., coined the Plaintiff's Mark in the year 1983 and accordingly obtained a Trade Mark registration for the same, the details of which are as follows:

Trade Mark	Cl.	Registration no. & Date	Go
BEVETEX	5	410744 dated 16.09.1983	Medicinal & P preparations

8.4 The Plaintiff's Mark is entitled to maximum protection as the same is an invented mark containing Molecule / Salt 'PACLITAXEL'. The Plaintiff on account of registration has a statutory right to the exclusive use of the Plaintiff's Mark and the use of the same or a deceptively similar Trade Mark by an unauthorised person or trader in relation to the similar kind of goods will constitute infringement of the Plaintiff's right of the exclusive use and the registered Trade Mark under the provisions of the Trade Marks Act, 1999 ("Act"). 8.5 The Plaintiff has been selling the Plaintiff's Drug since the year 2015. The Plaintiff has taken efforts to popularize Plaintiff's Drug and has expended substantial sums of money on sales promotion and publicity of the Plaintiff's Drug bearing the Plaintiff's Mark. Due to superior quality and high efficacy of the Plaintiff's Drug bearing the Plaintiff's Mark, continuous and extensive use of the Plaintiff's Mark and large sales of the Plaintiff's Drug as also wide publicity given to the Plaintiff's Drug bearing the Plaintiff's Mark, the Plaintiff has acquired immense reputation and goodwill in the Plaintiff's Mark and the goods sold thereunder. Consequently, the members of the trade, public as also the doctors and chemists exclusively associate the Plaintiff's Mark with the Plaintiff and the Plaintiff's Drug and with none else. The statement of sales and promotional expenses qua the Plaintiff's Drug under the Plaintiff's Mark is as under:

Year	Expenses	
	Rs. In Lac (Approx)	Rs. In La
2015-16	18.99	3
2016-17	34.80	6
Total	53.79	10

8.6 The Plaintiff came across the publication of the Application for registration of the Impugned Mark under Trade Mark Application No. 3254683 dated 09.05.2016 filed by the Defendant on a proposed to be used basis. The Plaintiff immediately filed its notice of Opposition ("Opposition") before the Trade Marks Registry on 27.12.2016. The Opposition proceedings are currently pending. Sometime in the third week of December 2017, the Plaintiff came across the Defendant's Drug under the Impugned Mark selling in Delhi. The Plaintiff upon enquiry came to know that the Defendant has launched the Defendant's Drug under the Impugned Mark sometime in October 2017.

8.7 The Defendant's Drug although a cancer drug contains a different salt namely 'BEVACIZUMAB' and is used for the treatment of colorectal cancer, ovarian cancer, cervical cancer, lung cancer and recurrent glioblastoma. Wrong administration of drugs can prove fatal. A comparison between the competing drugs is enumerated below:

Product features	Bevetex	Bevatas
Company	Sun Pharma	Intas
What is the product	This is Paclitaxel Injection Concentrate for Nanodispersion	Monoclonal antibody, used as anti-angiogenic agent to treat various cancer indications

Presentation	Vials of 100mg & 300mg	Vials 100mg & 400mg
Dosage approved	260 mg / m2 to 295 mg / m2 every 21 days	10 to 15 mg / kg repeated every 2 or 3 weeks
Route of administration	IV Infusion	IV Infusion
Effective dose based on BSA	400 mg	700 - 900 mg (2 vials or more of 400mg used). 100mg for titration
Broadly recommended for	Metastatic breast cancer	1) Metastatic colorecta cancer, 2) Unresectable, locally advanced, recurrent or metastatic non-squamous NSCLC This 3) Recurrent glioblastoma 4) Metastatic renal cel carcinoma, 5) Recurrent or metastatic cervical cancer 6) Recurrent epithelial ovarian, fallopian tube, or primary peritoneal cancer that is: platinum-resistant or platinum-sensitive
Most common side effects	Pain, peripheral neuropathy, neutropenia, leucopenia, alopecia, mucosal inflammation, asthenia, pyrexia, nausea, vomiting	Gastrointestinal perforation, surgery & wound healing complications, severe & fatal Hemorrhage

8.8 The Defendant has unlawfully adopted the Impugned Mark.

Being in pharmaceutical business, the Defendant is well aware of the Plaintiff's adoption and use of the Plaintiff's Mark. The Impugned Mark is structurally, visually and phonetically similar to the

Plaintiff's Mark. The competing medicines are sold in the same dosage form, i.e., injections and are sold at similar prices. Such adoption also amounts to unfair trade practice, unfair competition and dilution. Such act also amounts to misrepresentation and misappropriation of the Plaintiff's goodwill in the Plaintiff's Mark.

8.9 Both the Plaintiff's Drug and the Impugned Drug are used for treatment of cancer. Both of the competing drugs are Schedule- H drugs and also come in a single pack injection vials of 100 mg dosage. The Defendant's Drug is also sold for a price nearly identical to the price of the Plaintiff's Drug. If the wrong drug is given to the cancer patient undergoing treatment it can lead to disastrous consequences, hence, it is in public interest that the use of the Impugned Mark is restrained and therefore the Plaintiff has also given up its claim for damages and limited the relief to restrain the use of the Impugned Mark so as to avoid disastrous results.

8.10 In a case like the present where the molecule/ salt contained in the competing drugs, i.e., 'PACLITEXEL' and 'BEVACIZUMAB', cannot be easily pronounced, can one expect the patients / their attendants / chemist and their staff / nurses to know the finer difference between chemical compounds and biological compounds. Courts have repeatedly held that courts are not to speculate if there shall be confusion or not as the test of deceptive similarity is stringent and the threshold of confusion is low. Judicial notice has been taken in the judgment of Cadila Healthcare v. Cadila Pharmaceuticals, AIR 2001 SC 1952, that prescription drugs are sold even without prescription.

8.11 Prescription does not contain name of the salt or the Trade Dress / packaging of the drug. The competing Marks are not to be compared side by side. The test of confusion is to see if an average person with imperfect recollection would get confused as has been held in Corn Products. v. Shangrila Food, AIR 1960 SC 142. The consumer / patient does not know the difference between the salts. One cannot even pronounce the competing salts / molecules therefore, to be able to distinguish between the two is not possible.

8.12 Section 29(3) of the Act also contains a presumption that when there is identity between two competing Marks and goods, the Courts shall presume that the Impugned Mark is likely to cause confusion. It has been held in the decisions of Novartis v. Crest Pharma, 2009 (41) PTC 57 (Del), Charak Pharma. v. Glenmark, 2014 (57) PTC 538 (Bom) and Sun Pharma v. Glenmark, (2023) SCC Online Del 3786, that it is more dangerous when identical or deceptively similar Marks are used for drugs for different ailments.

8.13 It is the likelihood of confusion, which needs to be seen and not the actual confusion. The Impugned Mark has close resemblance to the Plaintiff's Mark. The first and last syllable are almost identical in the competing Marks and therefore the Impugned Mark is deceptively similar to the Plaintiff's Mark which is likely to cause confusion which will have dangerous consequences which can prove to be fatal. The Plaintiff's Drug and the Defendant's Drug are used for overlapping cancers, namely Lung and Breast cancer, in the background of medical negligence cases and medicines are sold without prescription or with prescriptions with illegible handwriting, Courts are not to speculate as to whether there is a probability of confusion between similar names as has been held in Cadila Healthcare v. Cadila Pharmaceuticals (supra) judgment.

8.14 The present Suit has been instituted by the Plaintiff with authorisation. Power of Attorney in favour of Mr. Amit Aggarwal issued by the Plaintiff was filed on record on 17.02.2018 after serving advance copy to the Defendant's Counsel, Ms. Isha Tyagi, Advocate, through email of the same date. The original Power of Attorney was shown during trial at the time of exhibiting documents and was exhibited as Ex. PW 1/1.

8.15 Accordingly, the Plaintiff is entitled to a relief of permanent injunction against the use of the Impugned Mark by the Defendant.

SUBMISSIONS ON BEHALF OF THE DEFENDANT:

9. The learned Counsel for the Defendant made the following submissions:

> 9.1 It is fundamental to Trade Mark law that the competing Marks are to be compared as a whole to ascertain similarity and likelihood of confusion. The Plaintiff's Mark and the Impugned Mark are entirely different and there can be no likelihood of confusion or deception and / or similarity between the two Marks. The Plaintiff's Mark and the Impugned Mark are totally different, dissimilar and distinct. The competing Marks are visually and phonetically dissimilar and there cannot be likelihood of confusion at any level. Even the Drugs sold under these marks are administered under the supervision of specialists in different ways. The Marks are visually, structurally and phonetically different as compared below:
>
> | PLAINTIFF'S MARK | IMPUGNED M |
> | --- | --- |
> | BEVETEX | BEVATAS |
> | Phonetics of the mark starts with phonics BEVE phonics Phonetics of the mark ends with phonics TEX phonics TAS No visual similarity as the labels are completely different. | Phonetics of the mark starts with BEVA Phonetics of the mark ends with TAS No visual similarity as the labels are completely different. |
> | The Trade Mark is qualified by the name of its chemical compound being "PACLITAXEL" | The Trade Mark is qualified by the of its chemical compound being name "BEVACIZUMAB" |

9.2 The Defendant had also applied for the registration of the Impugned Mark. When the Impugned Mark was examined by the Examiner of Trade Marks, he did not cite any conflicting Marks and the Application for registration of the Impugned Mark was accepted for advertisement. Even the Trade Marks Registry did not find any similarity between the Plaintiff's Mark and the Impugned Mark.

9.3 The Defendant's Drug contains the compound 'BEVACIZUMAB' under the Impugned Mark. The Defendant has been manufacturing and selling the Defendant's Drug at least since 2016 and has obtained all required permissions from the concerned authorities. The Defendant has coined / invented the Impugned Mark by amalgamating the words 'BEVA' derived from or referable to the active ingredient 'BEVACIZUMAB' and 'TAS' from the Defendant's Trade Name, INTAS, a pharmaceutical company of trade repute and standing since the last several decades. Various clinical

trials were conducted by the Defendant and said trials were approved by the appropriate authorities. The said permission was granted by Drug Controller General of India, Directorate General of Health Services on 23.06.2016 and 27.06.2016 respectively and thereafter by the Deputy Commissioner, Food and Drugs Control Administration, Gujarat State, Gandhinagar on 30.07.2016.

9.4 The Plaintiff's Drug contains Molecule / Salt 'PACLITAXEL' under the Plaintiff's Mark as a scheduled drug for treatment of breast cancer, non-small lung cancer and pancreatic cancer. Admittedly the Plaintiff avers to have started selling the Plaintiff's Drug only since the year 2015 even though the Plaintiff has claimed to have invented the Plaintiff's Mark in the year 1983. Thus, the Plaintiff has mala fidely hoarded the Plaintiff's Mark. The Plaintiff has no goodwill or recognition with the mark owing to non-use until 2015. The Plaintiff's Witness in his cross-examination has admitted that the Plaintiff was not using the Plaintiff's Mark from 1983 until 2015. Further, the Supreme Court in the judgment of Neon Laboratories Ltd. v. Medical Technologies Ltd., 2016 (2) SCJ 260, held that Section 47 of the Act is in the same vein and statutory strain inasmuch as it postulates the possibility of a registered mark being taken off the register on an application being made by any aggrieved person, inter alia, on the ground that for a continuous period of five years and three months from the date on which the trade mark was registered, there was no bona fide use thereof.

9.5 The turnover of the Defendant's Drug is more than that of the Plaintiff's Drug. It cannot therefore be said that the Defendant is trying to encash upon the reputation and goodwill of the Plaintiff's Mark.

9.6 The Plaintiff's Drug and the Defendant's Drug are Schedule H, IV Injection drugs and cannot be self-administered. They are also not 'Over The Counter' drugs or for that matter easily / readily available for self-medication. Indications and effect of both the drugs are different and is well known to the experts and medical practitioners who prescribe these drugs. Moreover, these drugs are available only on prescriptions and can be administered to patients only by or under the supervision of highly specialized super specialist oncologists. Thus, there cannot be any likelihood of confusion. The modes of administration and the drug formulations of the competing marks are completely different. The Plaintiff has itself admitted that the Plaintiff's Mark and the Impugned Mark themselves point out their main molecule which belong to different pharmacological groups. Further, due to the distinct and different nature of the main molecules, the modes of administration of the two products also become different. A chart comparing the 4 modes of administration of the Defendant's Drug and the Plaintiff's Drug is as below:

PARTICULARS	BEVATAS	
Reconstitution	It should be diluted with 0.9% sodium chloride solution for injection. The concentration of the final Bevacizumab solution should be kept	It shou 5% injecti Each ml nanodis mg pacl

within the range of 1.4 to concentration will be 5 16.5 mg/ml. mg/ml).

Administration	The initial dose should be delivered over 90 minutes as an IV over 30 minutes eve infusion. If the first weeks. infusion is well tolerated, the second infusion may be administered over 60 minutes. If the 60-minute infusion is well tolerated, all subsequent infusions may be administered over 30 minutes. Bevacizumab infusion frequency varies from 2 weekly to 3 weekly depending on the indication.	It has as intr

9.7 The process of infusion is a half or full day process, depending upon the medical condition of the patient. It is an 'Intravenous Product' and cannot be self-administered. Entire process of infusion is done under constant monitoring, guidance and supervision of super specialists. Medical practitioners prescribing or administering the drug are super specialists like oncologists and radiologists and the drugs can be administered only under their supervision by trained and skilled personnel within oncology centres. The Plaintiff's Witness admitted the fact that the Plaintiff's Drug cannot be administered by the Patient on his own. This Court in Kalindi Medicure Pvt. Ltd. v. Intas Pharmaceuticals Ltd., 2007 (34) PTC 18 (Del) held that the method of intake of the drug is not to be ignored. 9.8 Admittedly, both the Plaintiff's Drug and the Defendant's Drug contain totally different molecules / salt. The Plaintiff's Drug is a product of chemical formulation 'PACLITAXEL' which is a synthetic chemical compound. Whereas the Defendant's Drug is a biosimilar product 'BEVACIZUMAB' which is a DNA in nature. Though both the drugs are cancer drugs, there is a remarkable difference in the products. The name of the salts is predominantly reflected on packaging of the two products, further, the use of the prefix 'BEVA' is common to trade and the Defendant has several products with the suffix 'TAS'. 9.9 The Defendant's Drug costs three times more than the Plaintiff's Drug. The Defendant's Drug is a biological / biosimilar drug which involves extremely expensive clinical trials. There are also technical differences between the Plaintiff's Drug and the Defendant's Drug which is demonstrated as under:

BRAND NAME: BEVATAS	BRAND NAME: BEVE
Defendant's drug	Plaintiff's drug
Molecule:	Molecule:
Bevacizumab for injection	Paclitaxel injection

	Nano dispersion
Type of Drug: rDNA Drug	Type of Drug: Synthetic Chemical Dr
Dosage form: 100mg and 400mg for injection	Dosage form: 100mg and 300mg for i
Route of Administration: Intra venous injection and need to be administered by trained oncology nurses at a multi-speciality hospital	Route of Administrati Intra venous injectio administered by train nurses at a multi-spe

under supervision of medical or surgical under supervision of medical or surgical oncologists. Unlike other injectable oncologists. Unlike other injectable medicines it cannot be administered at medicines it cannot be administered at any common hospital or clinic. Bevatas any common hospital or clinic. cannot be sold without prescription of an oncologist.

Therapy: For the treatment purpose	Therapy: For the treatment pur
IMS category: Monoclonal antibody (Anti Vascular endothelial growth factor)	IMS category: Cytotoxic agent or inhibitor
Prescribed by: Medical / Surgical and Radiation Oncologist	Prescribed by: Medical / Surgical Oncologist
Product appearance: Vial for injection in a single pack	Product appearance: Vial for injection
Indication: First-line treatment of non-squamous NSCLC in combination with platinumbased chemotherapy. Metastatic carcinoma of the colon or rectum (mCRC). Advanced and/or metastatic renal cell cancer (mRCC). Epithelial ovarian, fallopian tube and primary peritoneal cancer. Cervical Cancer. Glioblastoma. Metastatic breast cancer (mBC).	Indication: After failure chemotherapy for Me cancer (mBC) or rel months of adjuvant
Type of medicine: Hospital based medicine, need to supply against prescription of registered	Type of medicine: Hospital based medi against prescriptio

medical practitioner or oncologist only. medical practitioner or oncologist only.

Need to be administered as an intra venous injection by trained oncology nurses under the supervision of registered medical practitioner (90 minutes infusion)	Need to be administ venous injection by nurses under the su registered medical minutes infusion)

MRP: Bevatas: Rs. 39995/- for 400mg and Rs. 25990/- for 100mg Dose: The recommended dose of bevacizumab is 7.5 mg/kg or 15 mg/kg of body weight given once every 3 weeks as an IV infusion in non-small cell lung cancer. Advanced and/or metastatic renal cell cancer (mRCC) : The recommended dose of bevacizumab is 10 mg/kg of body weight given once every 2 weeks as an IV infusion. Epithelial ovarian, fallopian tube and primary peritoneal cancer: The recommended dose of bevacizumab is 15mg/kg of body weight given once every 3 weeks as an IV infusion.	MRP: Bevetex: Rs. 37000/ 12500/- for 100mg Dose: 260 mg/m2 and Bevet every 3 weeks as IV minutes.

9.10 No case of infringement or passing off has been made out and the Plaintiff has failed to establish sufficient grounds for grant of an injunction in its favour. There is no evidence to show that the Plaintiff has acquired goodwill and reputation in the Plaintiff's Mark. The Impugned Mark, on the contrary, has acquired considerable reputation and goodwill in a short span of time. The motive of the Plaintiff is to curb healthy competition in the market. The launch of the Defendant's Drug was aimed at making the compound 'BEVACIZUMAB' accessible for Indian patients. Before the launch of the Defendant's Drug, only approximately 200 patients per month could afford the 'BEVACIZUMAB' therapy. However, now there has been a phenomenal increase and roughly 700 patients get benefited, of which the Defendant's Product is the most preferred product.

9.11 The drug formulations of the Plaintiff's Drug and the Defendant's Drug are completely different along with their modes of administration. There cannot be any likelihood of confusion as these drugs are Schedule H drugs and cannot be sold off the shelf. Indications and effects of both the drugs are different and are known to the experts and medical practitioners who prescribe and administer these drugs. The Plaintiff had contented in the Plaint that there is likelihood of confusion between the competing marks. However, the Plaintiff suddenly shifted its stand making a bald misleading averment that actual confusion had taken place. However, the Plaintiff has failed to file any documentary proof establishing an instance of actual confusion.

9.12 The view that the competing drugs are Schedule-H drugs which are available only through prescription will also have a material bearing while deciding the question of infringement, has also been upheld in the judgment of Astrazeneca UK Limited v. Orchid Chemicals and Pharmaceuticals

Limited, 2007 (34) PTC 469 (Del). In Gufic Ltd. & Anr. v. Clinique Laboratories, LLC & Anr., 2010 (43) PTC 788 (Del), it was held that the price differential between the two products being so vast that no consumer of products of either the appellant or the respondent would confuse one for the other is also a relevant factor while deciding the question of infringement.

9.13 In the judgment of Sun Pharmaceutical Industries Ltd. v.

Anglo French Drugs & Industries Ltd., 2015 (63) PTC 580 (Del), it was held that the judgment in Cadila Healthcare v. Cadila Pharmaceuticals (supra) cannot lead to the conclusion that any slight resemblance of phonetic similarity between two marks would automatically satisfy the test of confusion to a man of average intelligence having imperfect recollection. Both marks have to be seen as a whole. In the judgment of Schering Corporation v. Alkem Laboratories, 2010 (42) PTC 772 (Del), it was held that the appellants cannot appropriate to themselves the exclusive use of a generic term which is publici juris and descriptive, the fact that the drugs in question are Schedule-H drugs and that there are vast price differences also have a bearing while deciding the question of infringement of trade mark.

9.14 The Plaintiff has approached this Court with unclean hands and has suppressed relevant information. The Plaintiff filed Opposition against the Application for registration of the Impugned Mark. The Defendant filed the detailed response to the Opposition on 28.03.2017. The Defendant had launched the Defendant's Drug in October 2016, the launch was extensively covered in the media. Therefore, the Plaintiff has been well aware of the Defendant's Drug since 2016. However, the Plaintiff blatantly misrepresented facts and had filed the present Suit on frivolous cause of action with ulterior motive to deprive the Defendant of its lawful right.

9.15 The alleged cause of action that there could be confusion leading to false administration of drug and the sale of Defendant's Drug is thus not in public interest is completely unreal, far stretched and frivolous. The allegation of chances of confusion are premised on mere assumption that the Plaintiff's Mark and the Impugned Mark are deceptively similar which is not the case. Further, the Plaintiff's Drug and the Impugned Drug are not off the shelf products and are prescribed and administered by experts in oncology and the chances of confusion and wrong administration are only hypothetical arguments. There is also gross impropriety on the part of the Plaintiff for claiming that the cause of action only arose in the third week of December, 2017, since the Plaintiff had opposed the Defendant's Application for registration of the Impugned Mark in 2016 and further the launch of the Defendant's Drug was also in 2016. Thus, the cause of action of the present Suit is clearly manufactured and the Plaintiff has approached the Court with unclean hands.

REJOINDER SUBMISSIONS ON BEHALF OF THE PLAINTIFF

10. The learned Counsel for the Plaintiff made the following rejoinder submissions:

> 10.1 The Defendant has submitted that the competing drugs have different drug formulations and effects. The Defendant has alleged that there shall be no confusion because the competing drugs are scheduled drugs and are administered under the

> supervision, control, administration of specialized doctors. This defence has been rejected in the judgment of Cadila Healthcare v. Cadila Pharmaceuticals (supra). 10.2 Examination Report issued by the Trade Marks Registry is an e-report obtained by a mechanical process without application of mind. It is result thrown electronically within the internal data base. If search report is held to be conclusive then there is no need for the Trade Marks Registrar to publish a Mark and invite opposition. Therefore, if that is so, once there are no conflicting marks shown in the examination report, the mark should be automatically registered. Which is never the case.

The Application for registration of the Defendant's Mark has been opposed by the Plaintiff and the same is pending disposal. 10.3 Trade Marks are not to be dissected for the purposes of comparison, which is against the Anti-Dissection Rule. The Marks are to be compared as a whole. The Plaintiff is not claiming any right in the suffix 'BEV'. In the judgment of United Biotech v. Orchid Chemicals, 2012 (50) PTC4 33 (Del) (DB), it was held that the overall impression of the product created in the minds of an ordinary shopper should be looked at while deciding on the aspect of infringement, and the rival marks should not be dissected into two words. It was further held that minor differences are not to be found very technically in case of conflicting marks. Further, common to register does not prove common to trade. Various marks containing prefix 'BEV' have been applied for / pending before Trade Marks Registry does not prove that they are in use as has been held in Century Traders v. Roshan Lal Duggar, AIR 1978 Delhi 250. The defence of prefix having been derived from salt, and common to trade, have been rejected by this Court in Cadila Healthcare v. Aureate Healthcare, 2012 (51) PTC 585 (Del). Further, plea of common use shall fail unless substantial usage by others persons proven as has been held in Pankaj Goel v. Dabur India Ltd. 2008 (38) PTC 49 (Del).

10.4 The Defendant lead evidence through its sole witness Sh.

Mehul Pathak ("DW1") by filing his Affidavit in evidence, which was exhibited as DW 1/A. The evidence given by DW1 cannot be relied upon by this Court as he had been evasive and deposed falsely. He also chose not to answer whenever he felt that his answer would expose his false deposition. The evidence of DW1 is not credible as he contradicted himself several times and was continuously changing his stand. On most of the occasions when a question was put to DW1, he simply evaded the questions by answering that 'it is a matter of record' or that 'I am not aware'. Such answers by DW1 suggests an admission on his behalf and also consolidates the evasive conduct of the DW1.

10.5 There is no delay in filing the present Suit. The Suit was filed immediately in December 2017 on acquiring knowledge of the use of the Impugned Mark for the Defendant's Drug in the same month. As has been held in Midas Hygiene Industries (P.) Ltd. v. Sudhir Bhatia & Ors., (2004) 3 SCC 90, delay cannot be a ground for refusing injunction. The Plaintiff in December 2016 opposed the Defendant's Application for the registration of the Impugned Mark immediately upon its publication in 24.10.2016.

10.6 There is no hoarding of the Plaintiff's Mark by the Plaintiff.

There is a concept of deemed user under the Act and use is not required to be shown in an infringement suit as has been held in Gujarat Bottling Co. Ltd. & Ors. v. Coca Cola Co. & Ors., (1995) 5 SCC 545 and Wockhardt Ltd. v. Eden Healthcare, 2014 SCC OnLine Bom 163. The Plaintiff is admittedly the prior user of the Plaintiff's Mark. The statutory defenses provided in Section 30, 34 and 35 of the Act are not available to the Defendant. Hoarding of Trade Marks is no statutory defense and hence has no bearing.

10.7 Honest and concurrent use is a ground for obtaining registration under Section 12 of the Act but not a defence to an injunction action. Neither the use is honest nor it is concurrent. The Defendant's Application for registration of the Impugned Mark is opposed and the Defendant has no registration. Dishonest adoption and use run the risk of being challenged for infringement.

10.8 The judgment in Sun Pharmaceutical Industries Ltd. v. Anglo French Drugs & Industries Ltd. (supra) has been set aside by the Supreme Court by the consent of the parties. It has been held in the judgment of Saregama India Limited v. Balaji Motion Pictures, 2019 SCC OnLine Del 10036, that even if a judgment has been set aside by the appellate court at the consent of the parties, or for whatever reason it maybe, the judgment cannot be cited as a precedent.

10.9 The Plaintiff has, in Paragraph No. 23 of the Plaint, stated that the cause of action arose in favour of the Plaintiff when the Plaintiff's representative came across the Defendant's Drug under the Impugned Mark selling in Delhi. The present Suit is filed for relief against infringement of Plaintiff's statutory rights, apart from common law rights, and therefore it cannot be said that there is no cause of action.

ANALYSIS AND FINDINGS:

Issue Nos. 1 and 2 WHETHER THE PLAINTIFF IS THE REGISTERED PROPRIETOR AND PRIOR USER OF THE TRADE MARK 'BEVETEX'

11. Admittedly, the Plaintiff is engaged in manufacture, distribution and sale of Schedule-H Drug used for treatment of breast cancer, non-small cell lung cancer and pancreatic cancer under the Mark 'BEVETEX' and has registration for the following Trade Mark:

Trade Mark	Cl.	Registration no. & Date	
BEVETEX	5	410744 dated 16.09.1983	Medicin Pharmac prepara use

12. The Plaintiff has registered the Plaintiff's Mark in Class 05 in 1983 and has been using it since 2015. The Defendant has claimed the use of the Impugned Mark since 2016, subsequent to the registration and use of the Plaintiff's Mark. The Plaintiff has produced documentary and oral evidence in support of its registration and use of the Plaintiff's Mark. The Plaintiff has also

established that the Plaintiff's Mark is a uniquely coined term and that it is inherently distinctive. Admittedly, the Plaintiff was the prior user and the proprietor of the registered Mark, 'BEVETEX'.

13. Accordingly, the Plaintiff is the proprietor of the Plaintiff's Mark. The Plaintiff's Mark is entitled to the highest degree of protection, restraining infringement based on the registration since the year 1983.

14. Accordingly, Issue Nos. 1 and 2 are decided in favour of the Plaintiff and against the Defendant.

Issue Nos. 9 and 10 WHETHER THE DEFENDANT IS THE PROPRIETOR, HONEST AND PRIOR USER OF THE MARK 'BEVATAS'

15. The Defendant has coined and adopted the Impugned Mark in 2016, while the Plaintiff had obtained registration for the Plaintiff's Mark in 1983 and started manufacturing the Plaintiff's Drug under the Plaintiff's Mark in 2015 which is also prior to the claimed use of the Defendant's Drug.

16. There is nothing on record to show that the adoption of the Impugned Mark by the Defendant was dishonest, nonetheless, honest subsequent use is not a valid defence in a suit for infringement of Trade Mark. The Plaintiff has obtained the registration for the Plaintiff's Mark in 1983 while the Defendant filed the Application for the registration of the Impugned Mark in 2016, which has been opposed by the Plaintiff. The Opposition proceedings against registration of the Impugned Mark are pending.

17. Even if the Defendant's reasoning behind the adoption of the Impugned Mark, i.e., the Impugned Mark was coined by amalgamating the words 'BEVA' derived from or referable to the active ingredient 'BEVACIZUMAB' and 'TAS' from the Defendant's Trade Name, INTAS is accepted, the Defendant is not the prior user of the Impugned Mark.

18. Accordingly, Issue Nos. 9 and 10 are decided in favour of the Plaintiff and against the Defendant.

Issue Nos. 3 and 4 WHETHER THE USE OF THE MARK 'BEVATAS' BY THE DEFENDANT AMOUNTS TO INFRINGEMENT OF THE PLAINTIFF'S MARK 'BEVETEX'

19. The Impugned Mark, 'BEVATAS', is structurally and phonetically similar to the Plaintiff's Mark, 'BEVETEX'. An average consumer of average intelligence and imperfect recollection is likely to get confused between the competing Marks. The first and last syllable are almost identical in the competing Marks and, therefore, the Impugned Mark is structurally and phonetically similar to the Plaintiff's Mark, which is likely to cause confusion.

20. The two competing Marks are to be compared as a whole and as per the anti-dissection rule, if the Plaintiff's Mark and the Impugned Mark are compared as a whole, they are deceptively similar and likely to cause confusion in the minds of the consumers with average intelligence and imperfect recollection.

21. Although the Plaintiff has not claimed exclusive right over the use of the suffix 'BEV', it has claimed exclusive right over the Plaintiff's Mark as a whole and as has been held in the judgment of United Biotech v. Orchid Chemicals (supra), the overall impression of the product created in the minds of an ordinary person should be looked at while deciding on the aspect of infringement, and the rival marks should not be dissected into two words.

22. Further, common to register does not prove common to trade. Various marks containing prefix 'BEV' have been applied for / pending before the Trade Marks Registry does not prove that they are in use as has been held in Century Traders v. Roshan Lal Duggar (supra). Further, plea of common use shall fail unless substantial usage by other persons proven as has been held in Pankaj Goel v. Dabur India Ltd. (supra).

23. Trade Mark law seeks to prevent consumer confusion regarding the source or sponsorship of goods and services. In assessing likelihood of confusion between Trade Marks, it is necessary to keep in mind that consumers generally rely on the overall impressions or prominent details of a mark, rather than retaining a photographic memory of the entire Trade Mark. Thus, similarity between two Trade Marks is not assessed in isolation, but in the context of their market use. It is also essential to consider whether the goods or services offered under the competing Marks are identical or similar.

24. A consumer of a drug is likely not aware of the compound or salt behind the drug and is not expected to check the salt or compound of the drug that he is purchasing. The likelihood of confusion also increases with the fact that both the Plaintiff's Drug and the Defendant's Drug are used for the treatment of different kinds of cancer. In order to succeed in a claim of infringement, and to be entitled to an injunction on that basis, the Plaintiff is not required to prove actual confusion, all that has to be proved is likelihood of confusion. Confusion between drugs treating different ailments is even more dangerous and, therefore, a strict approach shall be applied while comparing the marks as has been held in the decisions of Novartis v. Crest Pharma (supra), Charak Pharma. v. Glenmark (supra) and Sun Pharma v. Glenmark (supra).

25. The judgment of the Supreme Court in Cadila Healthcare v. Cadila Pharmaceuticals (supra) holds that in pharmaceutical cases, a stricter approach has to be applied and the court has to ensure that there is no likelihood of confusion between two drugs and the mere fact that the products may be Schedule-H Drugs, or may be differently priced, does not mitigate the possibility or likelihood of confusion. Public health is of paramount importance and there could be no leniency whatsoever with respect to subject matters concerning public health and any likelihood of confusion between two drugs has to be avoided.

26. Schedule-H drugs differ from Schedule-L drugs in their availability and handling. Schedule-L drugs are accessible exclusively to physicians, whose expertise reduces the likelihood of confusion from their perspective. In contrast, Schedule-H drugs are dispensed by prescription and involve not only doctors, but also pharmacists, who supply these medicines to patients upon receipt of a valid prescription.

27. The probability of confusion significantly increases when prescriptions are managed by pharmacists and patients or individuals purchasing medication on their behalf. Moreover, first-time buyers may lack knowledge regarding drug pricing, rendering price distinctions less relevant. Thus, the risk of confusion in dealing with pharmaceutical products arises not only at the prescribing stage but also during dispensing and purchase. Any potential for confusion at any point, particularly concerning pharmaceutical preparations, is sufficient to justify the issuance of an injunction.

28. In view of the structural and phonetic similarity of the Plaintiff's Mark and the Impugned Mark, the competing Marks being used for similar products, i.e., medicinal and pharmaceutical preparations for human use, more particularly targeting different kinds of cancers, the prior use of the Plaintiff's Mark, and the likelihood of confusion, the use of the Impugned Mark by the Defendant amounts to infringement of the Plaintiff's Mark.

29. Accordingly, Issue Nos. 3 and 4 are decided in favour of the Plaintiff and against the Defendant.

WHETHER THE PLAINTIFF IS GUILTY OF HOARDING ITS MARK 'BEVETEX'?

30. Section 47 of the Act governs the right of a person to approach the Registrar of Trade Marks seeking removal of a registered Trade Mark from the Register of Trade Marks. Under Section 47(1)(b) of the Act, continuous non-use of a registered Trade Mark, extending up to a period of three months preceding the filing of the application, constitutes a valid ground upon which the applicant may seek cancellation of the registered Trade Mark from the Register of Trade Marks.

31. Section 47 of the Act is not an exception either to Section 29 of the Act, or to Section 28(1) read with Section 135 of the Act, which entitles the proprietor of a registered Trade Mark to an injunction against an infringer of such a registered Trade Mark. Any interested party can apply to the Registrar of Trade Marks for rectification of the Trade Mark from the Register of Trade Marks on the ground of five years of non-use of the registered Trade Mark. However, if no such application is made to the Registrar and it is not adjudicated upon, the registered Trade Mark remains on the Register of Trade Marks, and infringement of the registered Trade Marks is impermissible and, if infringement takes place, the proprietor of a registered Trade Mark is well within its right to seek reliefs against the infringement of its registered Trade Mark. The reliance of the Defendant on the decision in Neon Laboratories Ltd. v. Medical Technologies Ltd. (supra) is misplaced and does not help the case of the Defendant.

32. As long as a Trade Mark is validly subsisting on the register of Trade Marks, the rights of the registered proprietor of Trade Mark under Section 28(1) of the Act are protected. The registration by itself grants the Plaintiff the right to protect its Trade Mark and seek remedies against infringement of the Mark. Only registration of a Trade Mark is required to be shown in a suit for infringement of Trade Mark and actual use is not required to be shown in an infringement suit as has been held in the judgments of Gujarat Bottling Co. Ltd. & Ors. v. Coca Cola Co. & Ors. (supra) and Wockhardt Limited v. Torrent Pharmaceuticals Ltd (supra).

33. Considering the facts and circumstances of the present case, the Defendant has not applied for rectification of the Plaintiff's Mark from the Register of Trade Marks and instead adopted the Impugned Mark which is deceptively similar to the Plaintiff's Mark. The Plaintiff is admittedly the prior user and prior registrant of the Plaintiff's Mark and has successfully made out a case for infringement of the Plaintiff's Mark and therefore, the defence of non-use and hoarding of Trade Mark is not available to the Defendant. The Plaintiff has statutory remedies to protect the Plaintiff's Mark from infringement as long as the Plaintiff's Mark is validly subsisting on the Register of Trade Marks.

34. Accordingly, Issue No. 5 is decided in favour of the Plaintiff and against the Defendant.

WHETHER THE PRESENT SUIT HAS BEEN INSTITUTED BY THE PLAINTIFF WITHOUT ANY AUTHORIZATION?

35. The fact that the Suit was instituted by an authorised and competent individual, with the knowledge and approval of the Plaintiff, and that the actions of the constituted attorney have been duly ratified, is clear from express authority in favour of the constituted attorney viz. the Power of Attorney filed in the present proceedings. This Court also takes note of the fact that the prosecution of the suit has been done continuously by the Plaintiff for the last eight years. Requisite court fees have been duly paid in support of the Plaint.

36. The present Suit has been instituted by the Plaintiff with due authorisation. Power of Attorney in favour of Mr. Amit Aggarwal issued by the Plaintiff was filed on record on 17.02.2018 after serving advance copy to the Defendant's Counsel, Ms. Isha Tyagi, Advocate, through email of same date. The original Power of Attorney was shown during trial at the time of exhibition of documents and was exhibited as Ex. PW 1/1. The said Exhibit also stands proven during the course of the Trial. The Defendant has not met its burden to prove otherwise and has not let any evidence in its favour.

37. Accordingly, Issue No. 6 is decided in favour of the Plaintiff and against the Defendant.

WHETHER THE PRESENT SUIT SUFFERS FROM DELAY, LACHES AND ACQUIESCENCE?

38. The burden of proving delay, laches and acquiescence, lay upon the Defendant. However, there is nothing on record to show that the Suit by the Plaintiff is delayed in any manner or there is acquiescence on the part of the Plaintiff to the use of the Impugned Mark by the Defendant. Acquiescence is a positive act. It must involve active facilitation, whether by action or omission, of continued infringement by the respondent. Mere inaction, even any, would not amount to acquiescence.

39. The Plaintiff as soon as becoming aware of the Application for registration of the Impugned Mark filed the Opposition against the same and upon finding actual use of the Impugned Mark, the Plaintiff filed the present Suit for infringement of the Plaintiff's Mark. Therefore, there has been no delay on behalf of the Plaintiff in filing of the present Suit.

40. Even otherwise, the law with respect to delay while filing a suit against infringement of Trade Mark has been settled in a plethora of cases by the Supreme Court and this Court. This Court in Pankaj Goel v. Dabur India Ltd. (supra) clearly states that mere delay if any does not amount to acquiescence, unless accompanied by an act that indicates acceptance or encouragement of the infringing activities further, it is also settled that delay cannot be a ground for refusing injunction in cases of Trade Mark infringement as has been held in Hindustan Pencils v. India Stationery, 38 (1989) DLT 54 SJ and in Midas Hygiene Industries (P.) Ltd. v. Sudhir Bhatia & Ors. (supra).

41. Accordingly, Issue No. 7 is decided in favour of the Plaintiff and against the Defendant.

WHETHER THE PLAINTIFF HAS FAILED TO DISCLOSE ANY CAUSE OF ACTION TO FILE THE PRESENT SUIT?

42. In Paragraph 23 of the Plaint, the Plaintiff asserts that the cause of action arose when the Plaintiff's representative observed the Defendant's drug being sold in Delhi under the Impugned Mark. The present suit seeks relief for infringement of both statutory and common law rights; therefore, it cannot be concluded that there is no cause of action.

43. The Defendant's argument that a cause of action arises only upon actual confusion is not persuasive.

44. Accordingly, Issue No. 8 is resolved in favour of the Plaintiff and against the Defendant.

RELIEF

45. In view of the above findings, the Plaintiff is entitled to a relief of permanent injunction against the use of the Mark 'BEVATAS' with respect to pharmaceutical drugs. As the Plaintiff has submitted that the present Suit is in Public Interest, the Plaintiff has given up its claim for damages and rendition of accounts against the Defendant as stated in Paragraph No. 22 of the Plaintiff's Replication to the Defendant's Reply to the Application under Order XXXIX Rules 1 and 2 of the CPC, which is referred in Paragraph No. 10 of the Written Submissions dated 29.05.2025. Accordingly, no direction is required to be passed regarding damages and rendition of accounts.

46. In view of the above, it is declared that:

> i. The Plaintiff is the registered proprietor and continuous as well as prior user of the Plaintiff's Mark, 'BEVETEX';
>
> ii. The Plaintiff is not guilty of hoarding the Plaintiff's Mark, 'BEVETEX'; and iii. The Defendant's use of the Impugned Mark, 'BEVATAS' amounts to infringement of the Plaintiff's Mark, 'BEVETEX'.

47. In view of the above, the Defendant or anyone acting on its behalf are permanently injuncted and restrained from manufacturing, selling, or offering for sale, marketing, advertising, or in any

other manner dealing with medicinal and pharmaceutical preparations for human use using the Impugned Mark, 'BEVATAS' or any other Mark identical and / or deceptively similar to the Plaintiff's Mark, 'BEVETEX'.

48. As the Plaintiff has stated that this Suit is in Public Interest, there shall be no order as to costs.

49. Accordingly, the Suit is decreed in terms of the above directions. Let the Decree Sheet be drawn up accordingly. The Suit stands disposed of.

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50. After the pronouncement, at this stage, Mr. George Vithayathil, the learned Counsel for the Defendant makes a request for passing directions with regard to the existing stock containing the Impugned Mark 'BEVATAS'.

51. The Defendant is granted liberty to move an appropriate Application with regard to the same.

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