



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION

COMMERCIAL IP SUIT NO. 77 OF 2013

IPCA Laboratories Limited

...Plaintiff

Versus

Anrose Pharma

...Defendant

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Mr. Minesh Andharia a/w Mr. Jay Shah i/b Krishna & Saurastri Associates LLP for the Plaintiff.

None for the Defendant.

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CORAM : ARIF S. DOCTOR, J.

RESERVED ON : 22<sup>nd</sup> DECEMBER 2025

PRONOUNCED ON : 5<sup>th</sup> JANUARY 2026

**JUDGMENT:**

1. This present suit is instituted for infringement of trade mark combined with a cause of action of passing off. The Plaintiff in the present suit is a company incorporated under the Companies Act, 1913, having its registered office at the address mentioned in the cause title of the Plaintiff. The Plaintiff seeks a permanent injunction to restrain the Defendant from infringing the Plaintiff's registered trade mark ZERODOL and from using the trade mark ZEROVOL-P (**"impugned mark"**) to pass off the Defendant's goods as those of the Plaintiff.
2. It is the case of the Plaintiff that the impugned mark is deceptively similar to the Plaintiff's registered trade mark ZERODOL and that both the marks

are used in relation to the same goods, i.e. pain relief and/or pain management, medicinal and pharmaceutical preparations.

3. By an Order dated 29<sup>th</sup> October 2013, this Court granted ex-parte ad-interim reliefs in respect of infringement of trade mark. Thereafter, this Court, by an order dated 21<sup>st</sup> November 2013, granted leave under Clause XIV of the Letters Patent. On 9<sup>th</sup> December 2013, this Court confirmed the ad-interim order dated 29<sup>th</sup> October 2013 in favour of the Plaintiff.
4. Since, despite service of the writ of summons on 17<sup>th</sup> January 2014, the Defendant did not file any written statement, and the suit was transferred to the list of undefended suits as per the order of the Prothonotary and Senior Master dated 24<sup>th</sup> July 2017.
5. On 10<sup>th</sup> November 2025 the Advocate for the Plaintiff submitted that the Plaintiff had already led the evidence of one Mr. Harish Kamath, i.e., the Plaintiff's Company Secretary, who had filed his affidavit in lieu of examination in chief alongwith a compilation of documents and affidavit of documents. Accordingly, the Suit stood over to 17<sup>th</sup> November 2025 for the marking of the Plaintiff's documents. Since, however, the Plaintiff's witness was unavailable, on that date the matter was adjourned to 9<sup>th</sup> December 2025, on which day the Plaintiff's documents were marked.

#### **Submissions on behalf of the Plaintiff**

6. It is the case of the Plaintiff that in or about September 1992, the Plaintiff coined and/or adopted the distinctive trade mark ZERODOL in respect of medicinal and pharmaceutical preparation. The said mark has been put to

use in relation to the said goods in or about 2003. The Plaintiff presently markets more than 10 pharmaceutical combinations under the trade mark inter alia containing the word 'ZERODOL' as an essential feature thereof e.g. ZERODOL-P, ZERODOL-PT, ZERODOL-S, ZERODOL-MR, ZERODOL-TH etc.

7. The Plaintiff is registered proprietor of the mark ZERODOL in class 5 bearing No. 582203. The said registration is valid, subsisting and in force. Representative copies of the publicity material in respect of the said mark, statement of annual promotional expenditure (which includes the expenditure for promotion in respect of "ZERODOL"), and a copy of the statement of Annual Sales Turnover in respect of "ZERODOL" are annexed to the Plaintiff.
8. Learned Counsel for Plaintiff submits that in or about the 2nd week of October 2013, the Plaintiff came across Defendant's product (**"impugned product"**) bearing the impugned mark 'ZEROVOL-P' being sold in the market and accordingly procured Defendant's impugned product bearing the impugned mark ZEROVOL-P. The specimen of the impugned product bearing the impugned mark ZEROVOL-P, along with the original invoice, are annexed as Exhibit "P-10" and Exhibit "P-11" to the compilation of documents, respectively.
9. Learned Counsel for the Plaintiff submits that the Defendant is manufacturing and selling the impugned product under the impugned mark ZEROVOL-P, the word/expression ZEROVOL of the impugned mark is an essential feature and the same is confusingly and deceptively similar

to the Plaintiff's registered mark ZERODOL bearing no. 582203. It is submitted that the Defendant is using the impugned mark only with a view to trade upon and cash in on the goodwill and reputation of the Plaintiff's registered mark. It is further submitted that since the impugned mark is used in respect of medicinal preparation, the same seriously exposes the trade, medical profession and public to an inevitable risk of deception and/or confusion and jeopardizes public interest at large. In support of his submissions that the impugned mark ZEROVOL-P of the Defendant is deceptively similar to the Plaintiff's trade mark ZERODOL.

10. Learned Counsel for Plaintiff then placed reliance on the judgement in the case of **K.R. Chinna Krishna Chettiar vs Shri Ambal & Co., Madras & Anr.**<sup>1</sup>, to point out that the Hon'ble Supreme Court, while considering the deceptive similarity between the trade marks SRI ANDAL and SRI AMBAL, held as follows:

*"6. The vital question in issue is whether, if the appellant's mark is used in a normal and fair manner in connection with the snuff and if similarly fair and normal user is assumed of the existing registered marks, will there be such a likelihood of deception that the mark ought not to be allowed to be registered (see In the matter of Broadhead's Application for registration of a trade mark). It is for the court to decide the question on a comparison of the competing marks as a whole and their distinctive and essential features. We have no doubt in our mind that if the proposed mark is used in a normal and fair manner the mark would come to be known by its distinguishing feature "Andal". There is a striking similarity and affinity of sound between the words "Andal" and "Ambal". Giving the due weight to the judgment of the Registrar and bearing in mind the conclusions of the learned Single Judge and the Divisional Bench, we are satisfied that there is a real danger of confusion between the two marks.*

*7. There is no evidence of actual confusion, but that might be due to the fact that the appellant's trade is not of long standing. There is no visual*

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1 (1969) 2 SCC 131

*resemblance between the two marks, but ocular comparison is not always the decisive test. The resemblance between the two marks must be considered with reference to the ear as well as the eye. There is close affinity of sound between Ambal and Andal".*

He also placed reliance upon the decision of this Court in the case of ***Hiralal Prabhudas vs. Ganesh Trading Company & Ors.***<sup>2</sup>, wherein the Division Bench of this Court while considering phonetic similarity between the trade marks HIRALAL and HIMATLAL, held as follows.

*"4. The main bone of contention between the parties before us is whether the respondents' label is deceptively similar to the appellants' labels. To that end, it would be appropriate to recapitulate some well-established principles. In Kerly's 'Law of trade Marks and Trade Names' (10<sup>th</sup> Edition, pages 456-457) appears the following passage:-*

*"Two marks, when placed side by side, may exhibit many and various differences, yet the main idea left on the mind by both may be the same. A person acquainted with one mark and not having the two side by side for comparison, might well be deceived, if the goods were allowed to be impressed with the second mark, into a belief that he was dealing with goods which bore the same marks as that which he was acquainted. Thus, for example, a mark may represent a game of football; another mark may show players in a different dress, and in very different positions, and yet the idea conveyed by each might be simply a game of football. It would be too much to expect that persons dealing with trade-marked goods, and relying, as they frequently do, upon marks, should be able to remember the exact details of the marks upon the goods with which they are in the habit of dealing. Marks are remembered rather by general impressions or by some significant detail than by any photographic recollection of the whole. Moreover, variations in details might well be supposed by customers to have been made by the owners of the trade mark they are already acquainted with for reasons of their own."*

*In Re: Sandow Ltd. (1914) 31 RPC 196, it was held that identity of the figure in the centre is immaterial, the overall similarity between the two marks being the touchstone. In James C. & Bros. v. N.S.T. Co., AIR 1951 Bom 147, it was held by the Division Bench that it is important to find out what is the distinguishing or essential feature of the trade mark already registered and what is the main feature or the main idea underlying that*

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<sup>2</sup> AIR 1984 BOM 218

trade mark and ascertain if the trade mark whose registration is sought contains the same distinguishing or essential features or conveys the same idea. The question to be asked is what would be the salient feature of the mark which in future would lead the purchaser to associate the particular goods with that trade mark. In *Corn Products v. Shangrila Food Products*, AIR 1960 SC 142, holding that "Glucovita" and "Gluvita" were deceptively similar, it was observed that in deciding the question of similarity between the two marks the approach must be from the point of view of a man of average intelligence and of imperfect recollection and to such a person the overall structure and phonetic similarity and the similarity of the idea in the two marks is reasonably likely to cause confusion between them. In *Amritdhara Pharmacy v. Satyadeo*, AIR 1963 SC 449, coming to the conclusion that to an unwary purchaser of average intelligence and imperfect recollection, the overall structure and phonetic similarity between the two names "Amritdhara" and "Lakshmandhara" was likely to deceive or cause confusion, it was held that if a person is put in a state of wonderment it is sufficient to hold that the mark is likely to deceive or cause confusion. In *F-Hoffmann-La Roche & Co. Ltd. v. Geoffrey Manners & Co. Pvt. Ltd.*, AIR 1970 SC 2062, it was held that marks must be compared as a whole, the true test being whether the totality of the proposed trade mark is such that it is likely to cause deception or confusion or mistake in the minds of persons accustomed to the existing trade mark. Microscopic examinations not called for. Both visual and phonetic tests must be applied. In *Parle Products v. J.P. & Co.*, AIR 1972 SC 1359, it was held that what must be considered are the broad and essential features of the two marks which should not be placed side by side in order to find out the differences in design. It is enough if the impugned mark bears an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him. Each case must be judged on its own features and it would be of no use to note on how many points there was similarity and in how many matters there was absence of it.

5. What emerges from these authorities is (a) what is the main idea or salient features, (b) marks are remembered by general impressions or by some significant detail rather than by a photographic recollection of the whole, (c) overall similarity is the touchstone, (d) marks must be looked at from the view and first impression of a person of average intelligence and imperfect recollection, (e) overall structure, phonetic similarity and similarity of idea are important and both visual and phonetic tests must be applied, (f) the purchaser must not be put in a state of wonderment, (g) marks must be compared as a whole, microscopic examination being impermissible, (h) the broad and salient features must be considered for

*which the marks must not be placed side by side to find out differences in design and (i) overall similarity is sufficient. In addition, indisputably must also be taken into consideration the nature of the commodity, the class of purchasers, the mode of purchase and other surrounding circumstances...*

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*12. These contentions are as fallacious as is Mr. Kale's reliance on the above passage in Kerly misplaced. "Hiralal" and "Himatlal" are both common Indian names. There is a great deal of similarity in the phonetics of these two words be uttered in Gujarat by consumers who may even be illiterate. This phonetic similarity taken in conjunction with the otherwise similarity in the get-up of the offending label with the appellants' labels would, to our minds, undoubtedly confuse an ordinary purchaser of average intelligence and imperfect recollection and who may even be illiterate."*

11. Basis the above, he submitted that since the Plaintiffs trade mark ZERODOL and the impugned trade mark ZEROVOL-P were both visually and phonetically virtually identical coupled with the fact that the Plaintiff was the registered proprietor of ZERODOL the Plaintiff is entitled to and had made out a case for the grant of relief in terms of prayer clauses (a), (b) and (d) of the Plaintiff which read as follows:

*a) that the Defendants by themselves through their partners, proprietors, servants, agents, dealers, manufacturers, stockiest and/or otherwise howsoever be restrained by a perpetual order and injunction of this Hon'ble Court from in any manner using in relation to any pharmaceutical and medicinal preparations, the impugned trade mark ZEROVOL-P/ZEROVOL and/or any other word or mark which is identical with and/or deceptively similar in any manner whatsoever to that of the Plaintiff's trade mark ZERODOL so as to infringe the Plaintiff's trade mark ZERODOL bearing registration no. 582203 being Exhibit – 'A' hereto;*

*b) that the Defendants by themselves through their partners, proprietors, servants, agents, dealers, manufacturers, stockiest and/or otherwise howsoever be restrained by a perpetual order and injunction of this Hon'ble Court from in any manner using in relation to any pharmaceutical and medicinal preparations, the impugned trade mark*

*ZEROVOL-P/ZEROVOL and/or any other word or mark which is identical with and/or deceptively similar in any manner whatsoever to that of the Plaintiff's trade mark ZERODOL-P/ZERODOL so as to pass off and/or enable others to pass off the Defendants' goods and for that of the Plaintiff;*

*d) that the Defendants be ordered and decreed to delivery up to the Plaintiff for destruction without compensation all the articles, packing materials, finished goods, dies, papers, samples, stationery, visual aids, stickers, blister strips, publicity materials, catch covers and all other things bearing and/or containing reference in any manner whatsoever to the impugned trade mark ZEROVOL-P/ZEROVOL in any manner whatsoever;*

12. In addition to the above, the Learned Counsel for the Plaintiff submitted that the present suit, being a Commercial Suit, it is governed by Section 35 of the Civil Procedure Code, 1908, as amended by Section 16 of the Commercial Courts Act, 2015, entitling the Defendant to an order of costs. He pointed out from the provision that the costs contemplated thereunder would include legal fees and all other expenses incurred in connection with the proceedings. He pointed out that Section 35(3) of the amended Civil Procedure Code, 1908 provides that while awarding costs, due regard is also required to be given to the conduct of the Defendant.

13. In the aforesaid context, he submitted that given the conduct of the Defendant, not only was the Plaintiff entitled to an order of costs, but also was entitled to an order of exemplary costs. He has pointed out that in addition to costs as contemplated under the Commercial Courts Act, 2015, this Court also had the inherent power under Section 151 of the Civil Procedure Code, 1908 to grant exemplary costs in favour of the Plaintiff. He submitted that such an order was required to be passed to curb the menace of misuse of the Plaintiff's trade mark especially when

the products are medicines, which calls for a stricter test of comparison. Considering that the Defendant's adoption of the impugned mark does not repose any confidence and is, in my view, clearly dishonest and appears to have been undertaken in bad faith, the Defendant is liable to pay damages/punitive damages and costs including costs of litigation.

14. He thus submitted that the Defendant is entitled to pay punitive damages of an amount of Rs. 5,00,000/- along with interest calculated at 21% per annum from the date of filing the present suit till the final judgement in favour of the Plaintiff. Considering further the nature of infringement and passing off, the nature of rival goods being medicinal and pharmaceutical preparations, and with a view to dissuading others from indulging in such activities, it is imperative that exemplary costs (including an order for costs of the litigation) be awarded to the Plaintiff.

15. After hearing the Learned Counsel for the Plaintiff and going through the original documents and the evidence of the Plaintiff, none of which has either been disputed or much less denied, I am satisfied that the Plaintiff has made out a case which entitles the Plaintiff the reliefs sought for, the reasons are as follows :

A. The Plaintiff is the registered proprietor of the trade mark

ZERODOL as is evident from the trade mark registration certificate appended at Exhibit A1 to the Plaintiff.

B. The Plaintiff has also proved through the evidence of Plaintiff's witness-1, i.e., Mr. Harish Kamath that the Plaintiff has been using

the trade mark ZERODOL since the year 2003 by relying upon several sales invoices from the year 2003 which are appended at Exhibits F1 to F20 to the Plaintiff and have been duly proved in evidence. The Plaintiff has also, through the evidence of the Plaintiff's Witness -1, proved that the Plaintiff has, since the year 2003, been continuously, extensively and exclusively using the trade mark ZERODOL.

- C. The Plaintiff has also established a substantial sales turnover which is appended at Exhibit E to the Plaintiff and has also been proved in evidence. The Plaintiff has also produced a Chartered Accountant Certificate substantiating its commercial use of the mark. The evidence establishes that ZERODOL has acquired distinctiveness and is exclusively associated by the public and persons in the trade with the Plaintiff alone. Thus, the Plaintiff has established goodwill in its registered trade mark ZERODOL.
- D. A perusal of the rival trade marks makes plain that they are virtually identical. The Defendant has not so much as even attempted to make out a case of honest or bona fide adoption of the mark ZEROVOL-P. The Defendant has not even attempted to in any manner justify its adoption and use of the mark ZEROVOL-P or that the Defendant has any other defence available under the law.

- E. From the material upon which the Plaintiff has placed reliance, the adoption of the mark ZEROVOL-P by the Defendant is subsequent to the Plaintiff's registration and use. Thus, adoption and use of the mark ZEROVOL-P by the Defendant is plainly dishonest and without any due cause, and the use of the mark by the Defendant in respect of pharmaceutical and medicinal preparations constitutes infringement of the Plaintiff's statutory rights.
- F. *Equally*, given that the impugned mark is virtually identical to the Plaintiff's registered trade mark and both are used in respect of medicinal or pharmaceutical products, the likelihood of confusion is imminent. Thus, the use by the Defendant of the impugned trade mark would almost certainly result in the goods of the Defendant being passed off as those of the Plaintiff and hence the Plaintiff would be entitled to relief to restrain the Defendant from passing off the goods of the Defendant as those of the Plaintiff. Hence, the Plaintiff has made out a case for infringement of its trade mark and for passing off.
- G. There is nothing on record that militates against anything that has been averred in the Plaintiff and deposed to by the Plaintiff's. Furthermore, none of the Plaintiff's documents or material upon which reliance has been placed have been denied by the Defendant. The Defendant has not at any stage appeared in the proceedings

despite service of the Writ of Summons. The evidence of the Plaintiff's witness is uncontroverted.

H. Although the Plaintiff has claimed damages of Rs. 5,00,000/- with 21% interest, I find that the Plaintiff has not led any evidence in support of the Plaintiffs claim for damages or loss suffered. A perusal of the Plaintiff Affidavit of Evidence discloses that the Plaintiff has not even attempted to prove the loss or damages which have been claimed in the Suit.

I. The present Suit, being a Commercial Suit, is governed by the provisions of the Commercial Courts Act, 2015. Section 35 of the Code of Civil Procedure, 1908, as amended by Section 16 of the Commercial Courts Act, 2015, mandates that costs shall ordinarily follow the event and be awarded to the successful party. The provision further requires the Court, while determining costs, to have due regard, *inter alia*, to the conduct of the parties. In the facts of the present case, the record reflects that the Defendant, in spite of being duly served, has chosen not to defend the Suit nor even cross examine the Plaintiff's Witness. This conduct is an additional factor that makes it clear that the defendant's adoption of the impugned mark was dishonest and was actuated in bad faith. Moreover, the impugned products being medical products, a stricter order of costs must follow, as the Plaintiffs have profited at the potential risk to the public at large. In these circumstances, having regard to the conduct

of the Defendant and the statutory mandate under Section 35 of the Civil Procedure Code, 1908, as amended, the Plaintiff is entitled to an award of costs.

16. Hence, for the aforesaid reasons, I pass the following order.

**ORDER**

- i. The Suit is decreed in terms of prayer clauses (a), (b) and (d).
- ii. The Defendant shall pay costs of Rs. 15,00,000/- to the Plaintiff within a period of 8 weeks from today.
- iii. In the event, the costs are not paid within a period of 8 weeks from today, interest at the rate of 8% shall apply.
- iv. The office shall return the original documents to the Advocate for the Plaintiff upon the Advocate of the Plaintiff handing over a true copy of this Order along with photostat copies of the said compilation of documents duly certified by them as true copies.
- v. The Suit is disposed of in the aforesaid terms.

( ARIF S. DOCTOR, J. )