Sun Pharma Laboratories Ltd. Vs Madras Pharmaceuticals

Court: BOMBAY HIGH COURT

Date of Decision: Oct. 24, 2016

Acts Referred: Trade Marks Act, 1999 - Section 11, Section 9

Citation: (2016) 68 PTC 543

Hon'ble Judges: G.S. Patel, J.

Bench: Single Bench

Advocate: Mr. Janak Dwarkadas, Senior Advocate, with Mr. Amit Thakkar and Mr. Ramesh Gajria, i/b Gajria and Co, for the Defendants; Mr. Ravi Kadam, Senior Advocate, with Mr. H.W. Kane, Mr. Rahul Kadam and Mr. Nikhil Sharma, i/b W.S. Kane and Co, for the Plaintiff

Final Decision: Disposed Off

Judgement

G.S. Patel, J.(Oral) - This is an action in trade mark infringement and passing off. The principal dispute is between the Plaintiff and the 2nd

Defendant, two pharmaceutical companies. The 1st Defendant is a manufacturer for the 2nd Defendant.

2. The facts are few. The Plaintiff manufactures a pharmaceutical product under the mark Metosartan. This mark is registered to the Plaintiff in

Class 05 under Registration No. 2041169 with effect from 21st October 2010. The fact that it has been used since then is undisputed. The

product contains a formulation of Metoprolol Succinate and Telmisartan. This is prescribed for hypertension with Ischemic Heart Disease (IHD),

hypertension with diabetes and hypertension with cardiac comorbidities. Metoprolol is a beta-blocker that affects the heart and blood circulation.

It is used to treat angina (chest pain) and hypertension (high blood pressure). It is also used to treat or prevent heart attacks. Telmisartan is an

Angiotensin II Receptor Blocker (ARB). It works by relaxing blood vessels, which helps to lower blood pressure. This drug may also be used to

treat heart failure and to help protect the kidneys from damage due to diabetes. To quickly put the contest into perspective, the 2nd Defendant''s

product, Metosan, which the Plaintiff says infringes its trade mark, contains only Metoprolol but not Telmisartan.

3. Copies of the Plaintiff''s sales certificates are annexed Plaint, Exs. ""C1"" and ""C2"", pp. 23Ã¯Â¿Â½26. These show that from 2010 till 2012, the

Plaintiffs sales were over Rs. 900 lakhs. After the transfer of one division, the sales from 2012 to 2016 exceeded Rs. 10,000 lakhs. There are also

breakdowns of State-wise sales Plaint, Ex. ""C-1"", p. 24, and Ex. ""C-2"", p. 26. Some sample invoices are also annexed Plaint, Exs. ""D-1"" to ""D-

7"", pp. 27Ã¯Â¿Â½33; the earliest of these is of October 2010 Plaint, Ex. ""D-1"", p. 27. It is on this basis that the Plaintiff claims statutory and common

law rights, saying that its mark has attained considerable reputation and goodwill.

4. The Plaintiff claims that some time in 2016 it learnt of the Defendants'' marketing and manufacture of a rival pharmaceutical preparation

containing Metoprolol Succinate under the mark Metosan. This is the immediate cause for the present Suit.

5. Mr. Kadam for the Plaintiff says that the Defendants'' mark is structurally, visually and phonetically similar, and, for all intents and purposes

indistinguishable from the Plaintiff''s registered mark. The Plaintiff, therefore, seeks an injunction and a restraint against the Defendants in both

infringement and passing off.

6. I have heard Mr. Kadam for the Plaintiff and Mr. Dwarkadas at some length, and considered carefully their submissions. Mr. Dwarkadas took

me through a fairly comprehensive note of arguments, and Mr. Kadam, too, submitted his points in rebuttal. I am not entirely persuaded by Mr.

Dwarkadas''s defence, to which I will turn presently. At least on the cause of action in infringement, I have found against the Defendants and for the

Plaintiff. I am not, however, convinced that I should grant the injunction in passing off. It seems to me that there is a needless conflation of these

two distinct causes of action, perhaps because they do overlap in some respects. I will address that issue towards the end of this judgment, and

only say here that I do not believe there is a prima facie case made out in the fundamentals of the cause of action in passing off, viz., a case in the

tort of deceit.

7. The defence is mounted on several counts. Mr. Dwarkadas submits, on the basis of a reading of Section 29(2)(b) of the Trade Marks Act,

1999, that one must first see whether the rival marks are similar or dissimilar and only then proceed to the question of a likelihood of confusion or

deceptive similarity and not vice versa. We cannot, he says, and I think quite correctly, move backwards from an initial test of confusion or

deceptive similarity to then assess whether there is any similarity at all. The tests must run in this sequence, he submits, and only if there is a prima

facie finding of similarity can one proceed to examine whether that similarity is confusing or deceptive. The third test, an assessment of the

likelihood of severe adverse consequences, will only follow thereafter. I see no reason to quarrel with this proposition, generally stated. I do not,

however, believe that it is correctly applied to the situation at hand. I have not understood Mr. Kadam to work his case in reverse, i.e., to first

suggest danger, then to urge confusion and deception, and finally to mount the argument on similarity on an inverted pyramid.

8. To the contrary: Mr. Kadam is careful to construct his case in precisely the manner Mr. Dwarkadas suggests. Mr. Kadam agrees - this is not so

much a concession as an acknowledgement of the inescapable - that the Plaintiff''s mark is a portmanteau word, an amalgam of the names of two

generic drugs Metoprolol and Telmisartan. In the Plaintiff''s mark the first four letters are taken from the former and the last six letters are taken

from the latter. The mark combines parts of the names of two generic drugs, and it does so to reflect its particular formulation. There is, Mr.

Kadam says, no other mark like it; the formulation of both drugs includes Metoprolol, but that is all that the Defendants'' drug has, while the

Plaintiff''s drug has Telmisartan in addition. Between Metosartan and Metosan there is only the difference of the elision of the letters ''ART'' (or

''RTA''). This, Mr. Kadam submits, is hardly the kind of sufficiency of distinctiveness that the law demands. As to the structural and visual

similarity, this is a matter that speaks for itself. The difference is too slight to matter. About the aural and phonetic similarity too, there can be no

manner of doubt. Applying the well-established, even well-worn, test of the quidam consumer (he of average intelligence and imperfect

recollection), the saying of one name might well be taken for the other. Both are Schedule H prescription drugs; but prescriptions are all too often

indecipherable and a harried pharmacist might well mistake one for the other with a difference this slight. The first test is, therefore, Mr. Kadam

argues satisfied, and I do believe it is hard to fault his argument on this.

9. Mr. Dwarkadas''s response is that there is no occasion at all for testing any such similarity because the Plaintiff''s mark is inherently not

registrable. It ought never to have been entered on the register, and is liable to be struck off. This is the principal defence, and it is set out at some

length in the substantial Affidavit in Reply. Mr. Dwarkadas says that the Defendants'' mark is a combination of a part of the generic drug

Metoprolol and 2nd Defendant''s corporate name Sanofi. The result, according to Mr. Dwarkadas, is a completely invented word. The Plaintiff''s

mark, on the other hand, is admittedly coined from the names of two generic drugs and nothing besides. Both sources of the Plaintiff''s mark are to

be found in the list of International Non-proprietary Names or INN. These are unique names that, being pharmaceutical substances or active

pharmaceutical ingredients, are firmly in the public domain. None may claim exclusivity over these generic names. They are intended for use in

pharmacopoeias, labelling, product information, scientific use and so on. These generic names with INN status are used by the World Health

Organization (""WHO""), as also other organisations. Mr. Dwarkadas argues that since the Plaintiff''s mark Metosartan is drawn from two generic

drugs, therefore, the combination itself is prohibited. This is defence is based on a reading of Section 13 of the Trade Marks Act, 1999:

13. Prohibition of registration of names of chemical elements or international non-proprietary names.-

No word -

(a) which is the commonly used and accepted name of any single chemical element or any single chemical compound (as distinguished from a

mixture) in respect of a chemical substance or preparation, or

(b) which is declared by the World Health Organization and notified in the prescribed manner by the Registrar from time to time, as an international

non-proprietary name or which is deceptively similar to such name,

shall be registered as a trade mark and any such registration shall be deemed for the purpose of Section 57 to be an entry made in the register

without sufficient cause or an entry wrongly remaining on the register, as the circumstances may require.

(Emphasis added)

10. I do not believe Mr. Dwarkadas''s argument to be on sufficiently sure footing. It is true that the Plaintiff''s mark is a combination of the names

of two generics, Metoprolol Succinate and Telmisartan. Section 13 would operate to render either of these two generics incapable of registration.

That cannot possibly hold true for a combination of generic names. That proposition, viz., that no mark for a drug is registrable as a whole if it uses

any part of a generic name, is over-broad and without statutory support. Mr. Kadam says that there is absolutely no warrant for the proposition

that merely because source elements are INN''s, none can make partial use of those generics or combine parts of those names, and I think he is

correct.

11. In support of his argument that since the Plaintiff''s mark is drawn from two generic drugs, therefore, the combination itself is prohibited, Mr.

Dwarkadas relies on the decision of this Court in Ranbaxy Laboratories Ltd. v. Indchemie Health Specialities Pvt Ltd., 2002 (24) PTC

510 (Bom). The dispute in that case was between the two drugs Zanocin and Zenoxim. The Court drew a distinction between the suffixes ocin

and oxim, and the sound of the letter C in the plaintiff''s mark and the phonetics of the letter X in the defendant''s mark. I am not persuaded that the

portions of this decision on which Mr. Dwarkadas relies lend themselves to any generalised proposition on the question of similarity. Much of this

is case-dependent. The finding here was that the claimant''s mark was so largely derived from a generic source that it could only be descriptive.

Mr. Dwarkadas"s argument is, therefore, that if both component elements are found to be entirely attributable to generic drugs, then the same

result must follow.

12. Mr. Dwarkadas then relies on the Division Bench judgment in Bal Pharma Ltd. v. Wockhardt Ltd. & Anr., Order dated 12th June 2002 in

Appeal No. 498 of 2002, per AP Shah J (as he then was) and Smt NN Mhatre J. Here the two marks were Aziwin and Aziwok, both used in the

context of azithromycin tablets and syrups. Both claimed a common source. The word azi was found to be descriptive and common to the trade,

the suffixes wok and win to be entirely different and, therefore, the Court found no chance of confusion. To much the same effect is the decision of

the Delhi High Court in Schering Corporation & Others v. Getwell Life Sciences India Pvt. Ltd., 2008 (37) PTC 487 (Del.). regarding the

marks Temodal and Temoget. The Court found that the two marks were not identical and shared no phonetic or visual similarity. The plaintiff could

claim no exclusivity in the clipped aspect or part of the name temo, this being common to the trade and part of a generic chemical compound

Temozolomide. Similarly, there is the decision of a Division Bench of this Court in Schering Corporation, New Jersey, USA & Anr. v. United

Biotech Pvt. Ltd., New Delhi & Anr., 2011 (1) Bom C.R. 89. The Division Bench said that where a proprietor adopts a mark based on the

generic drug or ingredient, he does so with full knowledge of the risk that others too may follow suit. The first user cannot claim exclusivity in the

mark or name that is derived from the generic drug. At best, he can claim exclusivity in the added features which differentiate his mark from the

generic drug or ingredient.

13. I find that a common thread through all these judgments is that a comparison was drawn between the invented portions of the marks, i.e., those

not derived from generic sources; where there was found to be no similarity, injunctions were refused. None of these are cases where a proprietor

combines not a portion of one generic drug either completely or wholly with an invented suffix or prefix, but takes instead portions of two generic

drugs and puts them together and does so in a unique fashion. Would the same test apply and carry forward to such a situation as well? Mr.

Kadam does not claim exclusivity in meto or sartan taken separately, but in their combination taken as a whole. Consider for instance a

combination of parts of two well-known generic drugs paracetamol and ibuprofen. These are often prescribed and taken together and there are

many formulations that combine the two (including products from the 2nd Defendant). Any number of combinations of these are possible:

profenomol, ibumol and paraprofen. The fatal fallacy is in the defence argument''s assumption that all combinations of any parts of multiple generic

names are, ex hypothesi, equal, and all are equally descriptive. Thus, for instance, Metosartan is as descriptive, on this theory, as might be, say

Telmipro, Sartalol and perhaps even Etomis. On the face of it, the suggestion is not one that commends itself.

14. Moreover, it seems to be too far removed from the statutory intent when Mr. Dwarkadas suggests that if, by such a process of deconstruction,

every portion of a mark can be traced back to a generic, then the whole of the mark is deprived of all protection altogether. Accepting this

proposition would amount to carving out an exception to Section 17(2)(b):

17. Effect of registration of parts of a mark.-

(1) When a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken

as a whole.

(2) Notwithstanding anything contained in sub-section (1), when a trade mark-

(a) contains any part- (ii) Which is not the subject of a separate application by the proprietor for registration as a trade mark; or (ii) which is not

separately registered by the proprietor as a trade mark; or

(b) contains any matter which is common to the trade or is otherwise of a non-distinctive character, the registration thereof shall not confer any

exclusive right in the matter forming only a part of the whole of the trade mark so registered.

15. Section 13 contains a prohibition on the use of a word which is the commonly used and accepted name of a generic drug (or declared by the

WHO and notified as provided in sub clause (b)). It is this word or name that cannot be registered as a trade mark. Section 13 does not by itself

contain a restriction against use of part of a common generic name combined with something else or with some other expression. There are in the

market, as is well-known, a very large number of formulations which contain the words mycin or flox on and all of these have acquired

distinctiveness and received protection. I imagine that acceptance of Mr. Dwarkadas''s submission would take us to a position where no

pharmaceutical preparation known by a name any part of which can be traced to a generic drug would ever be able to receive any sort of

protection. That, I think, is not the purpose or intent of the law and it does not seem to me to have been the purpose of the intent of the judgments

on which Mr. Dwarkadas places reliance.

16. Mr. Dwarkadas''s submission that there is no likelihood of confusion or deceptive similarity is, therefore, not one I am prepared to accept.

Here again, his argument is founded essentially on the assumption that the two marks are distinct.

17. When Mr. Dwarkadas, therefore, turning to the aspect of confusion or deceptive similarity, argues that as between Sartan and San one

contains six alphabets and two syllables and the other three alphabets and one syllable, I think he probably credits the ordinary chemist, anxious

patient or weary physician with too great a capability of invariably drawing such nice distinctions. Sometimes these drugs are ordered on the

telephone. Very often they are handed out over the counter against indecipherable prescriptions. I am not persuaded that there is the kind of

distinction that Mr. Dwarkadas seeks. I do believe that there is a sufficient similarity, structural, phonetic and visual between the two marks even if

they are to be dissected in the manner he suggests. We no longer need proof of actual confusion. The test of probability is itself reduced to one of

near possibility. That speaks to the smallest or slightest likelihood as being sufficient.

18. Further, in Lupin Ltd. v. Eris Lifesciences Pvt. Ltd. & Others, 2016 (67) PTC 144 (Bom). a learned Single Judge of this Court said that

in a Suit for infringement all that needs to be shown is registration of the mark. That satisfies the test of distinctiveness for the purpose of Section 9

and 11 of the Trade Marks Act, 1999. A defendant''s honesty or dishonesty in the adoption of the rival mark is of no consequence on the cause of

action in infringement. In any case, I find it difficult to understand how the Plaintiff''s mark would not have been cited as a conflicting mark on the

2nd Defendant''s application for registration. If the 2nd Defendant did not take a search, it cannot be heard to complain; it was bound to take a

search both in the Registry Bal Pharma Ltd. v. Centaur Laboratories Pvt. Ltd. and Anr, 2002 (24) PTC 226 (Bom). the market

Gorbatschow Wodka K.G. v. John Distilleries Ltd., 2011 (47) PTC 100 (Bom). and this law is well settled. If it is found that the rival mark is

deceptively similar there can be no question of raising a plea of equity based on honest adoption.

19. I am not satisfied in the present case by the Defendants'' plea that there is sufficient distinction or that the Plaintiff''s mark is purely descriptive

and should be directed to be taken off the register. In any case, that would require me to go to the next level and find that this case fits within the

narrow exceptions allowed by the Full Bench of this Court in Lupin Ltd. v. Johnson & Johnson, 2015 (61) PTC 1 (Bom) (FB). That is not

something that I am prepared to do at a prima facie stage.

20. There are other defences taken as well, but these are quickly despatched. I do not think it is necessary to spend more time over the arguments

of delay, laches or acquiescence or on the question of prior adoption or user. It is not in dispute that the 2nd Defendant''s application for

registration of Metosan is as recent as 15th April 2015 on a ""proposed to be used basis"".

21. Finally, there is the question of the danger involved. When we consider these familiar situations and we set them up against what Mr. Kadam

points out are the inherent and very real dangers of misadministration of the drug, I believe it is necessary for a Court to exercise a higher level of

care in its assessment. Mr. Kadam relies on the decisions in Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73.

Medley Laboratories (P) Ltd., Mumbai & Anr. v. Alkem Laboratories Ltd., 2002 (25) PTC 592 (Bom) (DB). and Bal Pharma Ltd. v.

Centaur Laboratories Pvt. Ltd& Anr. 2002 (24) PTC 226 (Bom) (DB) immediate relevance is the decision of the Division Bench of this

Court in Medley v. Alkem (Supra). Here, the Division Bench was concerned with the two marks Supaxin and Spoxin. The Division Bench

considered the definition of the expression ""deceptively similar"" and in paragraphs 27 to 29 and 33 said:

27. According to the Supreme Court, therefore, a stricter approach should be adopted while applying the test to judge the possibility of confusion

of one medicinal product for another by a consumer. Confusion in the case of non-medicinal product may only cause economic loss to the

consumer. Confusion between two medicinal products may have disastrous effect on health, and in some cases, on life. Hence, in medicinal

preparations, much more care should be taken and the Court must be circumspect in dealing with the matters and in making appropriate orders.

28. The case of the appellants is that suffix ''XIN'' being common to both the drugs, there is likelihood of confusion. The mark of the plaintiffs is

registered, and, hence, it has statutory protection. It relates to a medicinal preparation. In the circumstances, in our opinion, the test of ''possibility''

laid down in Cadila Health Care Ltd. would apply. Applying the said test, there is likelihood, or in any case, possibility of consumer being

confused, and the plaintiffs were entitled to interim injunction. Moreover, Spoxin and Supaxin are visually, phonetically and structurally similar. No

doubt, both the drugs are sold under prescription, but that fact alone is not sufficient to prevent confusion which is likely to arise.

29. We are also impressed by the argument of the learned counsel for the appellants that in such cases, it is not necessary that there should be

actual evidence of confusion : Likelihood (and even possibility) is sufficient. The following observations of Parker, J. in Re Pianotist Co.''s

Application, (1906) 23 RPC 774, which have been quoted in various decisions, including Cadila Health Care Ltd., read thus :-

You must take the two words. You must judge them, both by their look and by their sound. You must consider the goods to which they are to be

applied. You must consider the nature and kind of customer who would be likely to buy those goods. In fact you must consider all the surrounding

circumstances; and you must further consider what is likely to happen if each of those trade marks is used in a normal way as a trade mark for the

goods of the respective owners of the marks.

33. In our opinion, however, when the test is "possibility" of confusion in medicinal preparations, as held by the Supreme Court in Cadila Health

Care Ltd., and the Courts have been asked by the Apex Court to take special care, in such cases, since confusion may harm and result in

unpleasant consequences, if not disastrous results, the learned Single Judge ought to have granted injunction as prayed by the plaintiffs. Since the

learned Single Judge has, prima facie, recorded findings which can be said to be adjudicatory in nature, and by taking the view that there was no

likelihood of confusion on the part of customers or repercussion on health as the drugs are available only on doctor"s prescription, and a wrong

test was applied, the appellants are right in contending that the decision deserves interference.

22. Therefore, once similarity is shown, and the possibility of confusion established, when dealing with pharmaceuticals, a Court must be much

more on the quivive. He points to the Supreme Court decision in Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73.

and particularly the observations in paragraph 25, and the reminder that we are concerned here with sophisticated drugs and pharmaceuticals, not

confectionary. The Supreme Court said that where drugs have a difference in composition, the applicable tests should be strictly applied, for the

two drugs may have quite different, and possibly catastrophic effects if wrongly administered. The Courts must be particularly vigilant if the rival

compositions are different. Mr. Kadam referred me to some literature on the subject. He emphasised that Metosartan targets two distinct

conditions in combination. Telmisartan is principally used to target high blood pressure and associated ailments such as heart attacks.

Metoprolol is intended to address hypertension. The combination addresses, as I have noted, patients who have a multitude of clinical issues that

require simultaneous treatment. The result, Mr. Kadam submits, is that a wrongful administration of Telmisartan can have quite unintended and

possibly disastrous side effects. This is true whether a person who needs the combination is not administered it, or where a person who does not

need the combination is administered it. This is, therefore, in his submission, a classic case where Courts must be more than usually vigilant. If,

therefore, it is found that there is similarity and there is a possibility of confusion, then the final determinant, that of unintended and disastrous

consequences and danger comes into play, the injunction must, therefore, in his submission, follow. But that was said in the context of a claim in

passing off.

23. Though I accept Mr. Kadam''s arguments and submissions on the cause of action in infringement, I will not, however, at this stage make an

order in terms of prayer clause (b) which is the injunction in passing off. I am not prepared to accept the submission, even based on Cadila, that an

injunction in passing off must be granted for the asking, or that simply because an infringement injunction is granted, one in passing off must follow.

These are two different remedies, and when the statute saves the separate remedy in passing off, it does so for good reason. The considerations

may overlap to some extent, but that cannot and does not mean that we should ignore so totally the essence of a cause of action in passing off.

That is, after all, a tortious action in deceit. Other factors must be more carefully weighed than is possible at this stage. In the words of Denning LJ

in Parker Knoll v. Knoll International Ltd., (1962) RPC 265 ""Secondly, ''to deceive'' is one thing. To ''cause confusion'' is another. The

difference in this: When you deceive a man, you tell him a lie. You make a false representation to him and thereby cause him to believe a thing to

be true which is false. You may not do it knowingly, or intentionally, but still you do it, and so you deceive him. But you may cause confusion

without telling him a lie at all, and without making any false representation to him. You may indeed tell him the truth, the whole truth and nothing but

the truth, but still you may cause confusion in his mind, not by any fault of yours, but because he has not the knowledge or ability to distinguish it

from the other pieces of truth known to him or because he may not even take the trouble to do so.

24. There is nothing before me to suggest that the 2nd Defendant, Sanofi, made any attempt at misrepresentation, or portrayed its drug as

something other than what it is, wittingly or unwittingly, or put out a falsehood. Indeed, on the considerations in passing off, the other factors

canvassed by Mr. Dwarkadas may well assume cardinal importance: differences in price points, trade dress and so on. Indeed, it rather seems to

me that Sanofi, the 2nd Defendant, took a studied decision to go ahead with Metosan, believing it had sufficient points of distinction, but also

ensuring that its packaging and pricing set it apart. The confusion I have addressed is only in the adoption of the mark itself; the Plaintiff''s claim that

the two words are much too similar and that confusion is apt to occur. Oliver LJ in Reckitt & Colman Products Ltd. v. Borden Inc., (1990) 1

All ER 873. First set out the three probanda of a tortious action in passing off, and which we now know as the ''Classical Trinity'': (i) goodwill

owned by a claimant; (ii) misrepresentation; and (iii) damage to that goodwill. The Classical Trinity places on a plaintiff the burden of proving

goodwill in its goods or services, trade dress, brand, mark or even the thing itself. A plaintiff must also show false representation (it matters not that

this is unintended) to the public that leads it to believe that the goods or services of the defendant are those of the plaintiff. Fraud is not a necessary

element Laxmikant V. Patel v. Chetanbhai Shah & Anr., (2002) 3 SCC 65. The similarity tests that we use in infringement have a role to play;

but they are not always and necessarily determinative. In a situation like the present, for instance, where the marks per se are found to be similar

but the manner of their use is differentiated, it is surely entirely possible to grant the injunction in infringement without being forced into an otherwise

unsupported conclusion of a case in passing off. Sanofi is not some upstart that needs to masquerade its goods'' origins as emanating from the

Plaintiff. This may, therefore, be that rare case where the Plaintiff succeeds on a prima facie case in infringement but not on the case in passing off.

It is not possible, in my view, to extrapolate from this an assumption that there is deceit on the 2nd Defendant''s part. That will require much more

material than I have at hand, and is best left to the trial. I leave all contentions open in that regard. In any case, I do not see how, in fairness, the

Plaintiff can insist on the second injunction in passing off on the pleadings as they stand.

25. Having reviewed the material, I am satisfied that there is a sufficient case made out for the grant of relief in terms of prayer clause (a) of the

Notice of Motion, the injunction in infringement.

(a) that pending the hearing and final disposal of the suit, the Defendants by themselves, their proprietor, partners, directors, agents, servants,

stockists, dealers, distributors and all persons claiming through them be restrained by temporary order and injunction of this Hon''ble Court from

infringing the Plaintiff''s registered trade mark No.2041169 in class 5 by using the trade mark Metosan or any other trade mark deceptively similar

to the Plaintiff''s registered trade mark Metosartan in respect of pharmaceutical and medicinal preparations and substance or in any other manner

whatsoever;

26. The Notice of Motion is disposed of in these terms with no order as to costs. At the request of Mr. Thakkar for the Defendants, the operation

of this order is stayed for a period of eight weeks from the date it is uploaded. Since this order is dictated in open court, and will take a few days

to transcribe and correct, that upload might take till after the Court reopens following the Diwali vacation which commences a few days from now.