

HEAVY COSTS LEVIED ON HABITUAL TRADE MARK INFRINGER

By Priya Thakkar

A suit was filed in the Bombay High Court in August, 2018 by Glenmark Pharmaceuticals Ltd. against Curetech Skincare and Galpha Laboratories alleging infringement of their trade mark and trade dress of their product “CANDID B” by using the trade mark “CLODID B”.

While going through the proceedings and in the course of hearing, the Hon’ble Court learnt that this was not the first time that the Defendant No. 2 (hereinafter being referred to as “Galpha”) had copied the Plaintiff’s (hereinafter referred to as “Glenmark”) products. Glenmark submitted before the Court that Galpha had, in the past, in or around the year 2003, copied the trade mark “ASCORIL” of Glenmark by using the trade mark “ASCODIL” for its products. At that time, Galpha had tendered an apology and given a written undertaking that they shall not infringe Glenmark’s rights and shall refrain from using the trade mark ASCODIL henceforth.

The learned Counsel appearing for Glenmark also brought to light the fact that Galpha had also infringed the trade mark of other pharma industries including Win-Medicare Pvt. Ltd., Centaur Pharma Pvt. Ltd., Franco-Indian Pharma Ltd., Cipla Ltd., Times Drugs & Pharmaceuticals (P) Ltd., Smithkline Beecham PLC, Jagsonpal Pharmaceuticals Ltd. who have filed various suits against Galpha in the past, the most recent one being Win-Medicare Pvt. Ltd. vs. Galpha wherein the Delhi High Court had observed that Galpha was a habitual infringer. Furthermore the goods of Galpha were termed as “Not of Standard Quality” by the Drugs Control Administration.

The following are some of the brands which were copied by Galpha:

Sr. No.	Brand of Galpha (Infringing product)	Brands of Other companies	Name of Company
1.	Clodid-B	Candid B	Glenmark Pharmaceuticals Ltd.
2.	Ecocin	Crocin	Smithkline Beecham PLC
3.	RINGWORM CUTER	RINGCUTER	Times Drugs and Pharmaceuticals (P) Ltd
4.	Bectodine	Betadine	Win-Medicare Pvt. Ltd.

The Court condemned this act of Galpha and the Directors of Galpha were ordered to pay a sum of Rs. 1.5 crore which was donated to the Kerala Floods Relief Fund.

On the same lines, in another suit filed by Shalina Laboratories against Twin Impex and National Laboratories, wherein the trade mark “TANZOL” of Shalina was infringed by the Defendants by using the mark “INASOL” bearing the same trade dress and colour scheme and infringement of copyright of Shalina, the Court came down heavily upon the Defendants. During the raid by the Court Receiver of the Defendants’ premises, the Court Receiver found other products namely, “SUPER PEPTI”, “BON APETIT”, “IBUCAB”, “IBUSAP”, etc which the Plaintiff alleged that were a blatant copy of the Plaintiff’s products namely “SUPER APETI” and “IBUCAP”. The Defendant had completely copied the look & feel and get up of the product of the Plaintiff and were infringing the trade mark and copyright of the Plaintiff. The Court decreed the suit in favour of the Plaintiff and ordered the Defendants to pay a sum of Rs. 1.5 Crore towards the Tata Memorial Hospital.

With these examples in mind, one can be assured that habitual infringer will not be left off easily and heavy costs will be imposed on them. Whether this acts as a deterrent is to be seen.