



2026:DHC:1832



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 28/02/2026

+ **CS(COMM) 896/2025**

**GLAXOSMITHKLINE PHARMACEUTICALS
LTD.**Plaintiff

versus

ZEE LABORATORIES LIMITED.Defendant

Advocates who appeared in this case

For the Plaintiff : Ms. Tanya Varma, Mr. Vardaan Anand, Ms. Ruchika Yadav and Ms. Hansika Bajaj, Advocates.

For the Defendant : Mr. Rohit Bohra and Mr. Siddharth Bambha, Advocates.

**CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA**

JUDGMENT

TEJAS KARIA, J

I.A. No. 20991/2025

1. This is an Application filed by the Plaintiff under Order XXXIX Rules 1 and 2 of Code of Civil Procedure, 1908 (“CPC”) restraining infringement of the Trade Mark, ‘PHEXIN’ (“**Plaintiff’s Mark**”), passing off, unfair competition, dilution etc.

2. The Defendant is using the Marks, ‘FEXIN’, ‘FEXIN-F’, ‘FEXIT’, ‘FEXIT-B’ and ‘FEXIT-M’ for sale of pharmaceutical ointments.



3. On 03.09.2025, the learned Counsel for the Defendant, on instructions, furnished an oral statement before this Court that the Defendant will discontinue the use of the Mark 'FEXIN' forthwith. The statement of the Defendant was taken on record and the Defendant was made bound to the statement.

4. The Defendant was, however, opposed the injunction against the use of the Marks, 'FEXIT', 'FEXIT-B' and 'FEXIT-M' ("**Impugned Marks**") and, accordingly, the Parties have been heard with respect to grant of interim injunction against the use of the Impugned Marks by the Defendant.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF:

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

5.1. The Plaintiff is a member of the GlaxoSmithKline ("**GSK**") group of companies, of which GSK Pharmaceuticals Limited is the parent company. GSK is a science-led global healthcare company based in the United Kingdom. GSK has had a presence in India dating back over 100 years since the incorporation of the Plaintiff in 1924. The Plaintiff's Mark has been in use in India since 1985 and has also received Trade Mark registration, the details of which are as under:

Trade Mark	Registration No.	Date of Registration	Class
PHEXIN	418731	7 th March 1984	05

5.2. The Plaintiff manufactures and markets extended-release antibiotic tablets for treatment of respiratory tract infections, urinary tract infections, skin and soft tissue infections, otitis media and other infections due to bacteria under the Plaintiff's Mark ("**Plaintiff's Product**"). The Plaintiff has also adopted distinctive outer packaging,



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‘  ’ (“**Plaintiff’s Trade Dress**”) for the product under the Plaintiff’s Mark, which consists of a white and green colour combination.

5.3. The Plaintiff has advertised and promoted the Plaintiff’s product under the Plaintiff’s Mark in India over the years. The consolidated advertising and promotional expenditure incurred annually by the Plaintiff for the products under the Plaintiff’s Mark are as under:

S. No.	Year	Advertisement & Promotional Expenses (in INR)
1.	2014	1,62,57,000
2.	2015	82,95,000
3.	2016	1,25,38,000
4.	2017	1,26,76,000
5.	2018	64,06,000
6.	2019	76,50,000
7.	2020	38,51,000
8.	2021	27,84,000
9.	2022	1,38,000
10.	2023	-
11.	2024	-
12.	2025 (Year-to-Date)	1,02,000

5.4. The Defendant is a company incorporated under the Companies Act. The Defendant is the marketer and manufacturer of pharmaceutical ointments under the Impugned Marks (“**Defendant’s Products**”). The Defendant has also adopted a Trade Dress with green and white



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packaging, ‘  ’ (“**Impugned Trade Dress**”), which is deceptively similar to the Plaintiff’s Trade Dress. The visual comparison of the Plaintiff’s Trade Dress and the Impugned Trade Dress is as under.

Plaintiff’s Product	Defendant’s Product
	

5.5. The Plaintiff sent a Cease-and-Desist notice dated 22.04.2025 (“**Cease and Desist Notice**”) to the Defendant directing the Defendant to cease and desist the use of the Impugned Marks and the Impugned Trade Dress. The Defendant did not respond to the Cease and Desist Notice and chose to ignore the same. Thereafter, the Plaintiff also addressed a follow up letter dated 02.05.2025 to the Defendant, which also went unaddressed by the Defendant. Thereafter, in July 2025, the Plaintiff proceeded to conduct a market check in the region of Delhi and came across the Defendant’s Products.

5.6. The Supreme Court in *Cadilla Healthcare Ltd. v. Cadilla Pharmaceuticals Ltd*, (2001) 5 SCC 73 and this Court in *Glenmark Pharmaceuticals Limited vs. Sun Pharma Laboratories Limited*,



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(2024) 100 PTC 505, have held that while judging deceptive similarity between competing marks used in pharmaceutical sector, stricter approach is to be applied. The pharmacists, chemists are not immune to mistakes and the handwriting of the doctors are mostly illegible, thus confusion and deception is inevitable. Public interest supports lesser degree of proof showing confusing similarity in the case of trade mark in respect of medicinal products as against other non-medicinal products. Confusion between medicinal products may be life threatening, not merely inconvenient and could have dire effect on public health.

- 5.7. The three ingredients of passing off stand satisfied in the facts of the present case. The Plaintiff's pleadings and the accompanying documents with respect its turnover for the preceding years and expenditure on promotion, the favourable orders passed by this Court in favour of the Plaintiff with respect to the Plaintiff's Mark and the continuous and extensive use of the Plaintiff's Mark for nearly half a century clearly establishes that the Plaintiff has immense goodwill and reputation in the Plaintiff's Mark.
- 5.8. The use of deceptively similar mark by the Defendant for identical goods, i.e. pharmaceutical preparations is bound to confuse the public. The risk is even more so as the goods in question are pharmaceutical preparations and the use of the Impugned Marks by the Defendant and the resultant misrepresentation is likely to cause monetary damage to the Plaintiff as well as hamper the goodwill of the Plaintiff accrued in the Plaintiff's Mark.



SUBMISSIONS ON BEHALF OF THE DEFENDANT:

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

6.1. The Impugned Marks and the Plaintiff’s Mark are neither identical nor are they deceptively similar. The Defendant is manufacturing and marketing the Defendant’s Products in trade dresses other than the Impugned Trade Dress. A comparison of the Plaintiff’s Trade Dress and the other trade dresses of the Defendant’s Products is as under:

Plaintiff’s Product	Infringing Product
	

6.2. The Defendant has been continuously using the Impugned Mark, ‘FEXIT’ since 2007, the Defendant has placed on record the manufacturing licence issued by the Drug Licensing Authority in 2007, evidencing approval to manufacture and sell the product under the Impugned Mark, ‘FEXIT’. The Defendant has also filed invoices demonstrating sales of its product under the Impugned Mark,



‘FEXIT’, establishing that the product has been circulating in the market for several years.

- 6.3. There is no likelihood of confusion as the Plaintiff’s Mark and the Impugned Marks have co-existed in the market for over ten years, and the Plaintiff has failed to produce even a single instance of confusion among consumers. The Defendant’s Products are antibiotic cream / ointment meant for treating dermatological conditions such as eczema. The Plaintiff’s Product is an oral antibiotic capsule used for treating bacterial infections such as urinary tract infections and respiratory infections. Both products are Schedule H drugs, which cannot be dispensed without a doctor’s prescription. The nature, purpose, intended use, and consumer base of the two products are distinct. The Defendant’s Products are priced between ₹100–₹150, whereas the Plaintiff’s capsule is priced around ₹250–260.
- 6.4. This Court in *Kalindi Medicure Pvt. Ltd. v. Intas Pharmaceuticals Ltd. & Anr.*, (2007) 136 DLT 200, held that even assuming the possibility of misreading a prescription, the mode of administration of the medicine is a crucial factor. The Court held that the marks, ‘LOPRIN’ and ‘LOPARIN’ were not deceptively similar as the modes of intake were different. Similarly, in the present case, given the distinct modes of use and significant difference in price, there is no likelihood of confusion. In *Sun Pharmaceuticals Laboratories Ltd. v. Hetero Healthcare Ltd. & Anr.*, (2022) 92 PTC 536, the marks were held not deceptively similar in view of different therapeutic uses, price ranges and the fact that both were Schedule H drugs. Additionally, the nature, purpose and intended consumer base of the



Plaintiff's Product under the Plaintiff's Mark and the Infringing Products are entirely distinct, therefore there is no likelihood of confusion as has been held by this Court in *RSPL Health Pvt. Ltd. v. Sun Pharma Laboratories Ltd.*, 2025 SCC OnLine Del 4461.

- 6.5. The prefix, 'FEXI' is common to trade. The Plaintiff contends that the "PH" in PHEXIN is similar to the "FE" in FEXIT. Over 43 Trade Marks containing the prefix 'FEXI / FEX' are registered in Class 5. These Marks are in the market, and the Plaintiff has not objected to any of them. Both the competing marks have co-existed without confusion of any nature. It is settled law that where Marks are not identical, the Court must assess the likelihood of confusion and the reputation of the Plaintiff's mark as has been held in *Renaissance Hotel Holdings Inc. v. B. Vijaya Sai & Ors.*, (2022) 5 SCC 1.
- 6.6. The Defendant has been dealing with the Defendant's Products since 2007 and the same have been listed on the Defendant's website since 2015, however, the Plaintiff has failed to seek an injunction against the use of the Impugned Marks, therefore, the Plaintiff is not entitled to obtain an injunction.

REJOINDER SUBMISSIONS ON BEHALF OF THE PLAINTIFF

7. The learned Counsel for the Plaintiff made the following rejoinder submissions:
- 7.1. The Plaintiff was not aware of the Defendant's use of the Impugned Marks, and even if without prejudice the user date of the Impugned Marks is accepted to be correct, the Plaintiff is still the prior user of the Plaintiff's Mark. Further, a mere delay in filing a Suit does not disentitle the Plaintiff to the grant of equitable relief of interim



injunction and delay in filing a suit is not a defence in a case of infringement as has been held by the Supreme Court in *Midas Hygiene Industries P. Ltd. V. Sudhir Bhatia and Ors.*, (2004) 3 SCC 90.

- 7.2. The Plaintiff's Mark and the Impugned Marks are deceptively similar when compared as a whole in their entirety. Further, it has been held in the case of *Automatic Electric Limited vs. R.K. Dhawan & Anr.*, (1999) 19 PTC 81, that the first syllable of the mark is the most important while adjudging deceptive similarity between the marks.
- 7.3. When it comes to pharmaceutical goods, courts have held that the difference in form and mode of administration is irrelevant for the purpose of adjudicating on the aspect of infringement / passing off. Hence, Plaintiff's Product being tablets and the Defendant's Products being ointment are irrelevant. With respect to the products being Schedule 'H' prescription drugs, it has been held by the Apex court that pharmacists are not infallible to confusion and the fact that the drugs in question are sold under prescription alone is not sufficient to prevent confusion which is otherwise likely to occur.
- 7.4. The Defendant has failed to show that 'PHEXI' or 'FEXI' are common to trade. The Trade Mark search report it seeks to rely on is irrelevant as courts have clarified that a Mark or its part being common to the 'Trade Marks Register' does not imply that it is also 'common to trade' as one may choose to register the mark and leave it unused and such registrations cannot divest the Plaintiff's Mark of distinctiveness, or disentitle the Plaintiff to an injunction.



7.5. Further, it is for the Defendant here to show that there is substantial use of the third-party marks it seeks to rely on along with the extent of trade in such products and how they pose a threat to the distinctiveness of the mark asserted by the Plaintiff. The Defendant has failed to demonstrate any of the above and, hence, the Defendant has not succeeded in substantiating its plea that 'PHEXI' being common to trade. The Plaintiff cannot be expected to run after every infringer and the same cannot be used as a defence by the Defendant against the Plaintiff's claim against it as has been held in *GlaxoSmithKline Pharmaceuticals Limited v. Horizon Bioceuticals Pvt. Ltd. & Anr.*, 2023:DHC:2390, and *Dr. Reddy's Laboratories Ltd. vs. Reddy Pharmaceuticals Ltd.*, 2004 (29) PTC 4.

ANALYSIS AND FINDINGS:

Deceptive Similarity of the Impugned Marks to the Plaintiff's Mark

8. The Plaintiff claims to be one of the biggest manufacturers of pharmaceutical products in India. The Plaintiff has obtained registration over the Mark, 'PHEXIN' in Class 05 since the year 1984.

9. A comparison of Plaintiff's Mark and the Impugned Marks *prima facie* shows that both marks are phonetically similar. The nature of the goods for rival marks is similar as the Plaintiff and the Defendant are dealing in a similar category of pharmaceutical products. The consumer base and the class of consumers is also similar.

10. The Plaintiff's Mark serves as a source indicator for the products provided by the Plaintiff. Therefore, the Plaintiff's Mark has attained a distinctive character and have become identifiers and distinguish the goods of the Plaintiff from those of other parties, including, from those of the



Defendant. By extensive, continuous, and prolonged usage, the public at large commonly associates the Mark 'PHEXIN', with the Plaintiff. The Impugned Marks are deceptively similar to the Plaintiff's Mark.

Likelihood of Confusion

11. The likelihood of confusion amongst the minds of the consumers is very high given the deceptive similarity between the Plaintiff's Mark and Impugned Marks. The use of the Impugned Marks by the Defendant is likely to cause confusion that the Defendant is associated with the Plaintiff as the Impugned Marks. It is trite law that mere likelihood of confusion is enough to establish a case of infringement of Trade Marks and actual confusion is not required to be demonstrated.

12. Further, the test of confusion is to be seen from the perspective of an average person with imperfect recollection getting confused and in view of the Plaintiff's Mark and the Impugned Marks being almost phonetically identical, any ordinary person would get confused and would not be able to distinguish between the Plaintiff's Mark and the Impugned Marks. A consumer of average intelligence and imperfect recollection would be unable to distinguish between the competing products. The substantial similarity in the competing Trade Marks coupled with the confined branding space, significantly increases the risk of confusion in the minds of the public.

13. In addition to the adopting a phonetically and visually deceptively similar Mark, the Defendant has also adopted the Impugned Trade Dress, which has been copied from the Plaintiff's Trade Dress in terms of colour combination and placement of features. India being a multilingual country and there being close phonetic similarity between the rival Marks, there are



high chances of slurring of the Plaintiff's Mark and the Impugned Marks. There exists high likelihood of confusion and deception apart from likelihood of injurious association in the minds of consumers. The Supreme Court in *Cadilla Healthcare* (supra) and this Court in *Glenmark Pharmaceuticals* (supra) and *Sun Pharma Laboratories* (supra) have held that while judging deceptive similarity between competing marks used in pharmaceutical sector, stricter approach is required to be adopted.

14. The pharmacist, chemists are not immune to mistakes, and the handwriting of the doctors are mostly illegible, thus confusion and deception is inevitable. Public interest supports lesser degree of proof showing confusing similarity in the case of Trade Mark in respect of medicinal products as against other non-medicinal products. Confusion between medicinal products may be life threatening, not merely inconvenient and could have dire effect on public health. Both the Plaintiff's Product and the Infringing Products being Schedule H drugs, which are only sold by prescription and the mode of administration of the Plaintiff's Product and the Defendant's Products being different, does not rule out the possibility of confusion. There is a likelihood of confusion between the Plaintiff's Mark and the Impugned Marks and, therefore, the decision in *Renaissance Hotel Holdings* (supra) does not further the case of the Defendant.

15. It is trite law that the initial interest confusion test proceeds on the principle that confusion in the minds of consumers may arise at the preliminary stage, prior to the actual purchase being completed. At the point of finalising the transaction, the consumer may no longer be in doubt as to the true origin of the goods or services. Nonetheless, even such transient confusion at the initial stage is sufficient to meet the requirement of



deceptive similarity under Section 29 of the Trade Marks Act, 1999. The infringer's objective may be served merely by diverting the consumer's initial attention. The consumer may, thereafter, consciously opt for the infringer's product on account of its own characteristics, with complete knowledge that it is unconnected with the registered Trade Mark.

16. The Defendant has failed to come up with a plausible justification for coming up with the Impugned Marks, accordingly, the use of the Impugned Marks, is *prima facie* dishonest.

17. The Defendant's use of the Impugned Marks appears to be with the intent of causing confusion in the minds of the customers to increase the revenue of the Defendant by adopting the Impugned Marks which are deceptively similar to the Plaintiff's Mark.

Goodwill and Reputation

18. The Plaintiff has advertised and promoted the Plaintiff's Product under the Plaintiff's Mark in India over the years. The consolidated advertising and promotional expenditure incurred annually by the Plaintiff for the products under the Plaintiff's Mark demonstrates the goodwill and reputation acquired by the Plaintiff's Mark. The Plaintiff has spent a significant amount in India for promoting the Plaintiff's Product under the Plaintiff's Mark and also won various awards and received recognition for its high-quality pharmaceutical products.

19. It is implausible that the Defendant was not aware of the Plaintiff and the Plaintiff's Mark considering the overwhelming goodwill of the Plaintiff. Accordingly, the use of the Impugned Marks is *prima facie* dishonest and appears to be an attempt to ride on the goodwill and reputation of the Plaintiff.



Passing Off:

20. The Plaintiff has made a *prima facie* case of passing off as they have shown substantial goodwill for the goods under the Plaintiff's Mark through the revenue earned by the Plaintiff and the awards received by the Plaintiff in the field of medicine across the globe and in India. As the Plaintiff has been able to demonstrate the likelihood of confusion, the Plaintiff is likely to suffer loss of reputation, if the Infringing Products are allowed to pass off as those of the Plaintiff.

21. The Plaintiff has established that the Defendant has not only infringed the Plaintiff's Mark, but the Defendant has also tried to pass off the Infringing Products as the products of the Plaintiff by using the Impugned Trade Dress.

Generic and Common to Trade

22. It is contended by the Defendant that the prefix 'FEXI' is generic and common to trade and a bare perusal of the Trade Marks Registry shows various registrations with the prefix 'FEXI'. This Court in *GlaxoSmithKline Pharmaceuticals* (supra) has clarified that 'common to register' is different from 'common to trade'. The burden to prove that the prefix, 'FEXI' is common to trade is on the Defendant and this burden cannot be discharged by citing the various marks which are merely registered in the Register of Trade Marks. Such Marks are not detrimental to the distinctiveness of the Plaintiff's Mark and does not bar the Plaintiff from obtaining an injunction against the use of Marks which are identical and / or deceptively similar to the Plaintiff's Mark.

23. The Plaintiff's Mark has amassed considerable goodwill and is neither generic, descriptive or common to trade. The Mark 'PHEXIN', with respect



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to pharmaceuticals is linked exclusively with the Plaintiff and therefore, the defence of generic and common to trade is not available to the Defendant.

24. The Plaintiff is not expected to sue every small infringer and use of Marks, deceptively similar to the Plaintiff's Mark, by third-parties and is not a valid defence against infringement of Trade Marks as has been held in *GlaxoSmithKline Pharmaceuticals* (supra), and *Dr. Reddy's Laboratories* (supra).

CONCLUSION

25. Having considered the submissions advanced by the learned Counsel for the Parties, the pleadings and documents on record, a strong *prima facie* case has been made out on behalf of the Plaintiff for grant of an interim injunction.

26. The Plaintiff has established its prior user as well as goodwill and reputation, on the basis of the documents on record. Injunction is a relief in equity, and in view of the aforesaid discussion, the same is in favour of the Plaintiff and against the Defendant. Further, the balance of convenience also lies in favour of the Plaintiff and against the Defendant and grave prejudice is likely to be caused to the Plaintiff if interim injunction as prayed for is not granted in favour of the Plaintiff and against the Defendant.

27. The learned Counsel for the Plaintiff has relied upon *Midas Hygiene* (supra) and *Hindustan Pencils* (supra) to submit that delay in filing a suit is not a ground to deny injunction, when the adoption is in itself dishonest. In cases of infringement of Trade Mark an injunction must follow and mere delay, if any, in seeking the remedy of injunction cannot be a ground to deny injunction to the Plaintiff.

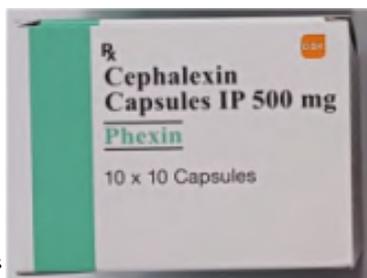


28. This is a case of triple identity where the Plaintiff's Mark and the Impugned Marks are deceptively similar, the product category is identical and the trade channel as also the consumer base is identical. The identity in the Impugned Marks is so close to the Plaintiff's Mark that they are indistinguishable.

29. Accordingly, the Defendant, its directors, proprietors, partners, associates, assigns or assignee in interest, heirs, successors or successors in interest, permitted assigns, sister concerns or group companies, distributors, dealers, wholesalers, retailers, stockiest, agents and all others acting for and on their behalf are restrained from using, soliciting and advertising in any manner including on the internet and e-commerce platform, directly or indirectly dealing in pharmaceuticals and veterinary products under the Impugned Marks, 'FEXIT', 'FEXIT-B' and 'FEXIT-M', or the Impugned



Trade Dress 'FEXIN', and / or any other Trade Mark or Trade Dress which is identical and / or deceptively similar to the Plaintiff's Mark, 'PHEXIN' or the Plaintiff's Trade Dress



'PHEXIN', so as to cause infringement and / or passing off of the Plaintiff's Mark or the Plaintiff's Trade Dress.

30. The present Application stands disposed of.

TEJAS KARIA, J

FEBRUARY 28, 2026

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