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

INTERIM APPLICATION (LODGING) NO.39102 OF 2025
IN
COMMERCIAL IP SUIT (LODGING) NO.38975 OF 2025

PROCTER & GAMBLE HEALTH LIMITED
a Company registered under the Companies Act, 1956 and having its registered office at P&G Plaza, Cardinal Gracious Road Chakala, Andheri East, Mumbai - 400 099

2. P&G HEALTH GERMANY GMBH
Sulzbacher Str. 40
65824 Schwalbach am Taunus
Germany

...Applicants/
Original Plaintiffs

Versus

1. HORIZON BIOCEUTICALS PVT. LTD.
a Company registered under the Companies Act, 1956 having its registered office at Plot No. 240, Sector-29 Huda, Panipat Haryana, India - 132103

Also at:
3-A, Industrial Area,
Trilokpur Road, Kala Amb Distt. Sirmour,
Himachal Pradesh

2. CUREWELL DRUGS & PHARMACEUTICALS PVT. LTD. TAR a Company registered under the Companies Act, 1956 having its registered office at Plot No. 241, Sector-29 Huda, G.T. Road, Panipat
Haryana, India – 132103

...Respondents/
Original Defendants

Mr. Alankar Kirpekar a/w Mr. Ayush Tiwari, Mr. Vikas Khera, Mr. Amit Kukreja and Ms. Alpana Mishra i/b Mr. Vikas Khera for the Respondents

Mr. Anand Mohan a/w Mr. Prasad A. Kamthe and Mr. Aditya Agarwal for the Respondent/Original Defendant

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CORAM : SHARMILA U. DESHMUKH, J.

RESERVED ON : FEBRUARY 4, 2026

PRONOUNCED ON : MARCH 17, 2026

ORDER :

1. The present action is for infringement of the First Plaintiff's registered trademark LIVOGEN and the Second Plaintiff's registered trademark LIVOGEN-Z and passing off on account of the Defendant's adoption of the mark LIVOGEM.

2. The Plaintiffs and the Defendants are engaged in the business of manufacturing and marketing of pharmaceutical products. The Plaintiffs health supplements under the trademark LIVOGEN were introduced in India in the year 1967 and are used as blood health solutions for adults, pregnant women, and children. The Plaintiff's predecessor in title-The British Drug House Limited conceived, adopted and started use of the trademark LIVOGEN in the year 1930 and the Plaintiffs' earliest registration of its trademark LIVOGEN in India dates back to the year 1942 and has been used in India since the year 1967. In respect of the trade mark LIVOGEN-Z, the application is filed on 19th September, 2013 with the user claim of 31st March, 2001. The 2nd Plaintiff's domain name comprising of the trademark LIVOGEN was registered on 26th December 2016. To demonstrate the

reputation and goodwill, the sales turnover is set-out in Paragraph 14 of the Plaint for the period from 2010 to 2024 as well as the advertising/commercial expenditure of the product under the mark LIVOGEN for the year 2021-2024 is set out.

3. It is submitted that in July 2024, the Plaintiffs came across the Defendant No. 1's application for registration of the mark LIVOGEM in Class 5, which was filed on 28th May, 2024, with user claim of 13th July, 2012, to which opposition was filed by the 2nd Plaintiff. In response, the counter claim of Defendant No.1 stated that the Defendant No.1 had conceived and adopted the mark LIVOGEM on 7th February, 1997, however, the said mark was not used and the same was used from 13th July, 2012 to treat ailments relating to liver dysfunction. It was claimed on the basis of uncommon element 'GEN' that the mark is different, and there is no likelihood of confusion or deception. The evidence in support of the application by Defendant No. 1 comprised of invoices for the products marketed under the mark LIVOGEM for the year 2012 to 2022. It is stated that in view of the evidence filed by the Defendant No.1 in August 2025, the Plaintiffs investigated into the business activities of Defendants, which confirmed the extensive marketing, manufacturing and selling of products under the mark LIVOGEM. Hence, the present Suit came to be filed.

4. The affidavit-in-reply contends that the Defendant No. 1 and Varav Biogenesis Pvt. Ltd., the Defendant No.2, which is the sister concern of the Defendant No. 1, honestly and bonafidely coined, conceived and adopted the trademark LIVOGEM on 7th February, 1997 and started using the same since 13th July, 2012 to improve liver health and digestion. The mark LIVOGEM is a coined term formed by strategic combination of the words LIVO and GEM. The prefix LIVO is indicative of liver health which aligns with the purpose of the Defendants' products and the suffix GEM denotes something of high-quality. The Defendants have consistently used the suffix GEM as part of their bonafide naming convention across multiple products. In 2001, the Defendants adopted another trademark OSSIGEM, which is registered in the name of Defendant No.2. It is stated that the expression LIVO is used by third parties as prefix in respect of medicinal and pharmaceutical preparations and in Paragraph 10, the extract of the trademark register is set-out showing the use of the word LIVO as a prefix in various registered trademarks. In Paragraph 11, the details of the trademarks available on-line using the expression LIVO as prefix in respect of pharmaceutical and medicinal products etc. is set-out. It is stated that the suffix GEM is entirely different from the uncommon part GEN and therefore, the trademark LIVOGEM is different from the trademark LIVOGEN.

5. It is submitted that there is difference in the composition, packaging and purpose and unlikely to cause confusion or deception amongst consumers. There is no material to prove that any section of public is misled by use of the trademark. The prefix LIVO is descriptive element widely used in pharmaceutical and health product trade to refer to liver related drugs and therefore, forms part of public domain in pharmaceutical industry.

6. In the affidavit-in-rejoinder, it is stated that comparison of the rival marks as a whole shows the deceptively similarity between the two marks. The Defendant No.1 has itself filed an application for registration of its mark and therefore, now cannot plead that the words LIVO and GEM are common to trade or descriptive.

Submissions :

7. Mr. Kamod, learned counsel appearing for the Plaintiffs has taken this Court through the pleadings in the Plaint as regards the adoption and use of the registered trademark. He further points out to the sales figure and advertisement expenses to demonstrate the extent of goodwill and reputation garnered by the Plaintiffs. He submits that the rival products are used for treating different ailments and therefore, greater care is required. He submits that the

Defendants are habitual infringers and have been held liable for the trademark infringement and passing off by the Delhi High Court and points out the order which is appended to the Plaint. He submits that it is the Defendants' case that the mark was conceived on 7th February, 1997 and has been in use since 13th July, 2012, however, there is no material to substantiate the adoption since the year 1997. He submits that the defence of the prefix LIVO being indicative of liver health, is not substantiated by document showing the industry practice and the list at Paragraph 10 is not stated to be in respect of mark being common to liver ailment. He submits that it is well settled that the marks are to be compared as a whole and cannot be dissected. He submits that in order to show that the mark LIVO is common to trade, usage is required to be shown, which is absent in the present case. He would further submit that the Plaintiffs are prior proprietors and prior users and the use of the Defendants' mark even if accepted since 2012, the sales figures produced on record, on the date of adoption of the mark by the Defendants, shows substantial goodwill. He submits that the packaging of the two products is similar and the added material is insufficient to distinguish the Defendants' product from that of the Plaintiffs. In support, he relies upon the following decisions :

(i) Wyeth Holdings Corporation & Anr. vs. Burnet Pharmaceuticals (Pvt.) Ltd.[1];

(ii) Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd.[2]

(iii) Glenmark Pharmaceuticals Ltd. vs. Alteus Biogenis Pvt. Ltd. & Anr.[3];

(iv) Macleods Pharmaceuticals Limited vs. Union of India & Ors.[4];

(v) Encore Electronics Ltd. vs. Anchor Electronics & Electricals Pvt. Ltd.[5]; and

(vi) Pidilite Industries Ltd. vs. Riya Chemy[6]

8. Mr. Kirpekar, learned counsel appearing for the Defendants would submit that the Defendant's application for registration of the mark claims user since the year 2012. He submits that the Plaintiffs claim that the source of its information is not the market but the advertisement in the trade mark journal which shows that there was no instance of confusion, although the Defendants have been marketing their products since the year 2012. He submits that in the plaint, there is no pleading about causing any confusion and in fact, the Plaintiffs have admitted that their investigation reveal that the Defendants are extensively manufacturing and marketing its product. He submits that

1 2008 SCC Online Bom 76
2 (2001) 5 SCC 73
3 2024 SCC Online Bom 3141 : (2025) 101 PTC 59
4 2023 SCC Online Bom 408
5 2007 SCC Online Bom 147 : (2007) 5 Bom CR 262
6 2022 SCC Online Bom 5077 : (2023) 1 AIR Bom R 710

if there was any possibility of confusion, then, the Plaintiffs would have been informed about the confusion. He submits that the Plaintiffs' product is a medicinal product, whereas, the Defendants' product is a nutraceutical product and points out to the license granted by Food Safety and Standards Authority of India (`FSSI'). He submits that the Plaintiffs' products are Schedule H products, which will be sold on prescription, whereas, the Defendants' product is a food supplement/nutraceutical. He points out that the application for registration of the mark in Class 5 was in respect of dietic food and substances and not in respect of the medicinal/pharmaceutical preparations. He points out to the invoices annexed to the affidavit-in-reply which shows use since the year 2012 and would submit that considering the co-existence of the Plaintiffs and Defendants, of which, the Plaintiffs claim to be unaware since the year 2012 , it is evident that there is no chance of confusion. He would point out that there are various registrations of the trademark using the prefix LIVO which is common to the trade and used for liver ailments and points out to one of the applications for registration of a mark LIVOTONE, which was filed on 5th April 1943 and would submit that the registration of LIVOTONE predates the Plaintiffs' registration. He would further point out to the e-commerce website selling products under the mark LIVOGIN, which was for protection of liver and would submit that the

same constitute use of the mark sufficient for being considered as LIVO being common to the trade. He submits that there is no question of LIVOGEM causing confusion and it is not sufficient to show mere similarity and what is required to be shown is that the similarity is likely to lead to confusion. He submits that there is a bonafide explanation for adoption of the mark as LIVO is common to the trade and GEM is a suffix which is common to the Defendants' product. He submits that considering that the Defendants are marketing their product since the year 2012, the balance of convenience is in favour of the Defendants.

9. In rejoinder, Mr. Kamod would submit that the registration of the Defendants was sought in Class 5 and an artificial distinction is sought to be drawn between medicinal products and nutraceutical products. He submits that even if the drugs are held to be Schedule H drugs, the same is not sufficient to obviate the confusion. He submits that there is a misreading of paragraphs 23 and 24 of the Plaint, as the said paragraphs plead that the Plaintiffs became aware of the Defendants in view of the evidence filed. He submits that the Defendants have not taken the defence of acquiescence and did not carry out any search in the Registry, and therefore the adoption of the mark is at the Defendants' own peril. He submits that the Plaintiffs are not required to seek action against each and every infringer and, in any event, the

basis for the challenge in the present case is the similarity between LIVOGEN and LIVOGEM. He further submits that all the trademarks relied upon by the Defendants do not pertain to liver ailment.

10. In sur-rejoinder, Mr. Kirpekar would submit that the listings which are placed on record would show that the products are being marketed with the prefix LIVO. He submits that in the Defendants' application, the Plaintiffs' mark LIVOGEN was not cited, and it is immaterial as to whether the Defendants conducted a search before filing their application. In support, he relies upon the following decisions:

(i) Macleods Pharmaceuticals Ltd. vs. Intas Pharmaceuticals Ltd. & Anr.[7];

(ii) Sun Pharmaceuticals Industries Ltd. vs. M/s West Coast Pharmaceuticals Works Ltd. & Anr.[8];

(iii) Sun Pharmaceuticals Industries Ltd. vs. Emcure Pharmaceuticals Ltd.[9],

(iv) Ruston & Hornsby Ltd. vs. Zamindara Engineering Co.[10];

(v) Sun Pharmaceutical Industries Ltd. vs. Meghmani Lifescience Ltd. & Anr.[11]; and

7 2013 SCC OnLine Bom 1779
8 2012 SCC OnLine Guj 6290
9 2012(2) Mh.L.J. 37
10 (1969) 2 SCC 727
11 2025 SCC OnLine Bom 5394

(vi) Corona Remedies Pvt. Ltd. vs. Franco-Indian Pharmaceuticals Pvt. Ltd.[12]

11. Rival contentions now fall for determination:

12. The Plaintiffs had applied for registration of its trademark LIVOGEN, in the year 1942 and is stated to be introduced in India in the year 1967. The Defendants have applied for registration of its mark LIVOGEM on 28th May, 2022, with a user claim of 13th July, 2012. The Plaintiffs' product LIVOGEN is used for the prevention of iron deficiency anemia, and the active ingredients are mainly Ferric Ammonium, Protein Hydrochloride, Nicotinamide, D-Panthenol, Pyridoxine Hydrochloride, Folic Acid, Cyanocobalamin, and Zinc Sulphate Monobydrate. The Defendants' product LIVOGEM is for supporting liver health and digestion with active ingredients such as Choline Citrate, L-Ornithine, Silymarin Extract, Niacin, Pantothenic Acid, and Vitamin B-complex. The ailments which the rival drugs treat are different, and the active pharmaceutical ingredients of both the drugs are different. The vast difference in the target ailments and compositions would impose greater duty on the Court as even the slightest possibility of confusion would lead to disastrous effect. The statutory framework of Trade Marks Act, 1999 uses the expression likelihood of confusion, whereas judicial pronouncements have applied

12 2023 SCC OnLine Bom 833

the test of possibility in case of medicinal and pharmaceutical products having lesser threshold as any harm whatsoever resulting from any kind of confusion would be disastrous as there is element of public interest and health involved.

13. In the case of ***Cadila Health Care Ltd. Vs. Cadila Pharmaceuticals Ltd.*** (supra), the Hon'ble Apex Court has held that a stricter approach should be adopted while applying the test to judge the possibility of confusion of one medicinal product for another by the consumer. It has further held that in the field of medicinal remedies, the Courts may not speculate as to whether there is a probability of confusion, and if there is a possibility of confusion, the use of confusingly similar marks is required to be injuncted.

14. Mr. Kirpekar would seek to make an artificial distinction by stating that the Defendants' products are nutraceutical products, whereas the Plaintiffs' products are medicinal preparation, and therefore there is no likelihood of confusion. On the contrary, the submission would assist the case of the Plaintiffs, as the consumption of one medicine for the other, would lead to disastrous consequences. It is no answer to say that the Plaintiffs' drugs are Schedule H drugs, as the Apex Court in the case of ***Cadila Health Care Ltd. Vs. Cadila Pharmaceuticals Ltd.*** (supra) has held that it is not uncommon that,

because of lack of competence or otherwise, mistakes can arise even in the case of prescription drugs and their dispensation by pharmacists. The pleaded case of the Defendants is that the respective marks operate in separate commercial channels without any specification as to the different commercial channels and indeed there can be none as the Plaintiffs as well as the Defendants' products would be generally sold through pharmacy shops. The Defendants have also applied for registration of their product in Class 5 which renders unsustainable the artificial distinction sought to be created by Mr. Kirpekar.

15. The defence is (a) bonafide adoption of LIVOGEM (b) prefix LIVO common to trade (c) difference in rival marks as uncommon element GEM and GEN are different (d) difference in active ingredients and target ailments. As far as the last of the defence is concerned, the same works against the Defendants as the difference in target ailments and active ingredients would invite injunctive reliefs even if there is a slightest possibility of confusion. To support of the defence of no possibility of confusion, Mr. Kirpekar seeks to rely on the Defendants' co-existence since the year 2012, and in support has produced the stock transfer notes and invoices from the year 2012. Section 29(2) of the Trademarks Act provides that a registered trademark is infringed by a person who, not being a registered

proprietor, uses in the course of trade a mark which, because of its similarity to the registered trademark and the identity or similarity of the goods or services covered by such registered trademark, is likely to cause confusion on part of the public, or which is likely to have an association with the registered trademark. As held in the case of ***Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd.*** (supra), it is not the probability of confusion but the slightest possibility of confusion which is required to be restrained. It is not necessary to show an actual instance of confusion for seeking the relief of injunction.

16. In the case of ***Macleods Pharmaceuticals Ltd. vs. Intas Pharmaceuticals Ltd. & Anr.*** (supra), the Hon'ble Division Bench has rejected a similar contention regarding the absence of actual confusion by reason of co-existence. The Hon'ble Division Bench has held that in case of a medicine/pharmaceutical products, the Court should apply a stricter test. It also noted the decision in the case of ***Bal Pharma Ltd. v. Centaur Laboratories Pvt. Ltd.***[13]**,** which had held that in a situation where the Defendant has been using the mark, even if concurrently, without making himself aware of the fact as to whether the same mark is the subject matter of the registration and belongs to another person, the first person cannot be heard to complain for he has been using it negligently without taking the elementary precaution of

13 Appeal No.778/2001 decided on 28.08.2021

making himself aware by looking at the public record of the Registrar as to whether the mark in question is the property of another.

17. The co-existence of the Defendants since the year 2012, even if accepted, cannot constitute a defence where the rival marks are deceptively similar. The Defendants have stopped short of claiming acquiescence as a defence, and the ground of co-existence is not a defence available to the Defendants, as they have failed to take search of the Registry in order to verify whether any mark existed prior to the adoption of the mark in the year 2012. Having failed to take the elementary precaution, the adoption of the mark by the Defendants is at their own peril. The Hon'ble Division Bench in ***Macleods Pharmaceuticals Ltd. vs. Intas Pharmaceuticals Ltd.*** (supra), has further held that the duty of the Court must always be to protect the public, irrespective of what hardship or inconvenience it may cause to a particular party whose trademark is likely to deceive or cause confusion.

18. It is well settled that the marks are required to be compared as a whole, which is the anti-dissection rule. In the case of ***Macleods Pharmaceuticals Ltd. vs. Intas Pharmaceuticals Ltd.*** *(*supra), the marks were OFRAMAX vs. OFLOMAC and the proceedings were in the context of rectification application which had been filed. The Hon'ble

Division Bench considered the various decisions and culled out the principles in paragraph 25 as under :

> “25. The principles which are emerging from the decisions set out hereinabove are summarised in the following manner:
>
> (a) When a particular medicinal or a pharmaceutical product is involved as the impugned trade mark which may deceive the public or cause a confusion with respect to another trademark, it is the Court's primary duty to take utmost care to prevent any such possibility of confusion in the use of trademarks.
>
> (b) Confusion in case of a non-medicinal or a non-pharmaceutical product may only cause economic loss to the person, but on the other hand, a confusion in terms of medicinal or a pharmaceutical product may have disastrous effect on the health. Hence, it is proper to require a lesser quantum of proof of confusing similarity for such products.
>
> (c) The Court may not speculate as to whether there is a probability of confusion between the marks. Mere existence of the slightest probability of confusion in case of medicinal product marks, requires that the use of such mark be restrained.
>
> (d) While arriving at a conclusion with respect to the similarity and confusion between medicinal products, the same should be examined from the point of view of an ordinary common man of average intelligence instead of that of a specialised medicinal practitioner. Courts must decide the same from the view point of

man with average intelligence considering multiple factors such as the first impression of the mark, salient features of both the products, nature of the commodity, overall similarity and the possibility of the same creating a confusion amongst the public at large.

(e) The primary duty of the Court is towards the public and the purity of the register. Duty of the Court must always be to protect the public irrespective of what hardship or inconvenience it may cause to a particular party whose trade mark is likely to deceive or cause confusion.

(f) The following rules of comparison can be culled out from various pronouncement of Court from time to time.

(i) Meticulous comparison is not the correct way.
(ii) Mark must be compared as whole.
(iii) First impression.
(iv) Prima facie view is not conclusive.
(v) Structural resemblance.
(vi) Similarity in idea to be considered.

(g) The main object of maintaining trade mark register is that the public should know whose goods they are buying. It is therefore essential that the register should not contain the trade mark which is identical by which purchaser may likely to be deceived by thinking that they are buying the goods of a particular company/industry whereas he is buying the goods of another company/industry."

19. When considered in the light of the settled principles above, taken as a whole LIVOGEM and LIVOGEN are visually and phonetically similar. The Defendants have sought to emphasis that LIVO is common to trade and the uncommon element GEM is different from GEN. To substantiate the contention that LIVO is common to trade, the Defendant has produced in paragraph 10 list of trade marks registered in favour of third parties using the prefix LIVO and in paragraph 11 the list of parties using the trademarks containing the expression LIVO as prefix in respect of medicinal and pharmaceuticals preparations. The Defendants have taken a search of the register and internet and placed on record the result of the search to plead that the mark LIVO is common to trade. In so far as the marks on the registers are concerned, mere presence of the mark on the register is not sufficient to prove user. In **Corn Products Refining Co vs Shangrilla Food Products Ltd.**[14]**,** the Hon'ble Apex Court observed as under:

> "The series of marks containing the common element or elements therefore only assist the applicant when these marks are in extensive use in the market. The onus on proving such user is of course on the applicant, who wants to rely on the marks….Now of course, the presence of mark in the register does not prove its user

14 AIR 1960 SC 142

> at all. It is possible that the mark may have been registered but not used. It is not permissible to draw any inference as to their user from the presence of the marks on the register."

In the same decision, the Hon'ble Apex Court held as under:

> " ..before the applicant can seek to derive assistance for the success of his application from the presence of number of marks having one or more common features which occur in his mark also, he has to prove that these marks had acquired a reputation by user in the market."

20. The Defendants have placed the products available on the e-commerce websites to show use of the prefix LIVO in medicinal and pharmaceutical preparations. For the purpose of being considered common to trade, it has to be shown that these marks had acquired a reputation by user in the market. The placing of certain listings from e-commerce websites or the result from the search taken of the register is inadequate to demonstrate the fairly extensive use of the common element. The contention that the prefix LIVO is a common industry practice in case of drugs dealing with liver ailments by relying on the e- commerce listings is self defeating that the listings contain products which treat other ailments and are marketed under the trade mark containing the word LIVO. The other aspect that militates against

the defence that the Defendants have themselves applied for registration of their mark LIVOGEM, and, they are therefore now estopped from contending that the mark is common to the trade.

21. Even accepting for the sake of arguments that the prefix LIVO is common to the trade and descriptive, and regard is to be had to the uncommon element GEN vs GEM, even on that count the defence would not succeed by reason of visual and phonetic similarity between the uncommon elements. The Defendants have merely replaced the last alphabet "N" by "M" and there is strong possibility of them being pronounced similarly. The hurried utterances of the rival drugs is likely to result in the pharmacist, when asked for the Plaintiff's drug, to hand over the Defendant's drug as the pharmacist would not inquire about the ailment in respect of which the drug is being purchased. It is no answer to say that the drugs are Schedule H drugs as the contention stands sufficiently answered by the decision in **Cadila Health Care Ltd vs Cadila Pharmaceuticals Ltd.** (supra).

22. As the rival marks are visually and phonetically similar, *prima* facie case has been made out for infringement of the Plaintiff's registered trade mark. The Defendant's stated existence since the year 2012 cannot tilt the balance of convenience in favour of the Defendants as it is not pleaded that prior to adoption of the mark, the

Defendants had taken the elementary precaution of taking search of the trade mark registry to find out about existence of deceptively similar mark. There is no defence available as it is not shown that the prefix LIVO is common to trade and in any event the uncommon elements are also visually and phonetically similar. The Plaintiff's have thus made out *prima facie* case for grant of injunction against infringement of their registered trademark.

23. As far as passing off is concerned, it is not necessary that grant of injunction against infringement must also result in injunction against passing off. There is no material demonstrated to show that the Defendants misrepresented that its goods are that of the Plaintiff. The trinity test is of goodwill and reputation, misrepresentation and damage to goodwill. The Plaintiff has pleaded about the sales turnover without attaching the certificate of the chartered accountant certifying the sales. In any event, it is not only the goodwill and reputation of the Plaintiff which suffices to arrive at a finding of passing off. The Plaintiff must show misrepresentation intended or unintended by the Defendant to make out a case for passing off. The pleadings and submissions in that respect are silent. The Defendant has placed on record the difference between the packaging of the two products, both of syrup and tablets. There are sufficient distinctions between the

rival packaging in manner of depicting the mark, the added words and elements. The action for passing off will be a matter of trial and at this stage, I am not inclined to grant the relief of passing off on the basis of material placed on record.

24. Dealing with the decisions cited by the Defendants, in **Macleods Pharmaceuticals Limited vs Intas Pharmaceuticals Ltd** (supra), the rival marks therein were Anti Thyrox vs Lethyrox. There was no registration of the mark Thyrox and the mark Lethyrox was coined from the active ingredient molecule. The Court found that the marks were dissimilar and refused injunction. The decision turned on the facts of that case upon considering the marks therein and will not assist the Defendant in different factual scenario.

25. The decision of **Sun Pharmaceuticals Industries Ltd vs M/s West Coast Pharmaceuticals Works Ltd** (supra), is the decision in Appeal, where the Appellate Court refused to interfere with the discretion exercised by the Single Judge. The said decision is distinguishable and inapplicable to present facts.

26. In **Sun Pharmaceuticals Industries Ltd vs Emcure Pharmaceuticals Ltd** (supra), the question of passing off was considered and the Court was of the view that the rival marks were not phonetically not similar. The relief was considered on the backdrop of

assessment of similarities between the rival marks.

27. In the decision of **Sun Pharmaceuticals Industries Limited vs Meghmani Lifesciences Limited & Anr** (supra), the Court did not find deceptive similarity between the marks RACIRAFT and EsiRaft.

28. Each case is to be decided on the basis of the marks therein and unless there is a proposition of law laid down in the decision, the decision does not have binding effect.

29. In light of the above, *prima facie* case has been made out for grant of interim relief in respect of infringement of trade mark. The balance of convenience is not in favour of the Defendant as it adopted a deceptively similar mark without taking the elementary precaution of taking a search of the register and, even if taken, if it proceeds to adopt the mark, does so at its own peril. The products being medicinal and pharmaceuticals products treating different ailments and having different compositions, even a slightest possibility of confusion is required to be arrested in public interest. Hence, the Interim Application is allowed in terms of prayer clause (a), which reads as under:

> "a) that pending the hearing and final disposal of the Suit, the Defendants by themselves. their promoters, directors, assigns, relatives, successors-in-interest licensees, franchisees, partners, representatives. servants, distributors, employees, agents etc. be restrained by an order

and injunction of this Hon'ble Court from using the mark LIVOGEM and/or any other mark identical and/or deceptively similar to the Plaintiffs' LIVOGEN trade marks under registrations Nos. 9596 and 2599064, in any manner whatsoever upon and in relation to their business, so as to infringe the same."

[SHARMILA U. DESHMUKH, J.]