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

% Judgment Reserved on*: 08.04.2026*
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\+ **RFA(OS)(COMM) 10/2026 CM APPL. 21698/2026**

INTAS PHARMACEUTICALS LIMITED ..... Appellant

versus

SUN PHARMA LABORATORIES LIMITED .....Respondent

Advocates who appeared in this case

For the Appellant : Mr. Sandeep Sethi and Mr. Amit Sibal, Sr. Advs. with Ms. Bitika Sharma, Mr Kapil Midha, Mr. George Vithayathil, Ms. Ahaana Singh Rana, Ms. Mrinalini Goyat, Mr. Aditya Prakash Mishra, Ms. Smriti Nair, Mr. Krisna Gambhir and Ms. Shreya Sethi, Advs.

For the Respondent : Mr. Sachin Gupta, Mr. Rohit Pradhan, Mr. Rajat Jain, Mr. Ajay Kumar, Ms. Prashansa Singh, Ms. Mahima Chanchalani, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J.

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1. The present appeal arises from the Judgment and Decree dated 28.03.2026 passed by the learned Single Judge of this Court in CS (COMM.) No. 39 of 2021, titled as **'Sun Pharma Laboratories Ltd. v. Intas Pharmaceuticals Ltd.'** ['impugned judgment']. By the impugned judgment, the learned Single Judge permanently restrained the Appellant (Intas Pharmaceuticals Ltd.) from using the mark 'BEVATAS' in relation to its anti-cancer drug containing the molecule 'Bevacizumab'. The suit had been instituted by the Respondent (Sun Pharma Laboratories Ltd.) on 21.12.2017 alleging infringement and passing off of its trademark 'BEVETEX' in relation to its anti-cancer drug containing the molecule 'Paclitaxel'.

Factual Matrix

2. The facts narrated by the Appellants in the appeal are as under: -

2.1 The Appellant is a multinational pharmaceutical company with a substantial presence in India and abroad, operating across multiple therapeutic segments including oncology.

2.2 The Appellant coined and adopted the mark 'BEVATAS' ['Appellant's mark'] for its anti-cancer drug containing the molecule 'Bevacizumab', a monoclonal antibody used in the first line treatment of multiple cancers such as colorectal, ovarian, cervical, lung cancer, metastatic breast cancer ['mBC'] and recurrent glioblastoma. 'BEVATAS' was launched in India in 2016 after obtaining approval from the Drug Controller General of India ['DCGI'] and following rigorous clinical trials. The drug is administered intravenously by trained medical professionals under the

supervision of an Oncologist.

2.3 Since its launch, 'BEVATAS' has been used continuously, openly and extensively by the Appellant and has acquired substantial goodwill and reputation in the market. It is stated to be the market leader amongst products containing the molecule 'Bevacizumab' in India, with a market share of approximately 22%, and has been administered to over 75,000 cancer patients, with about 12,000 patients currently undergoing treatment.

2.4 The Respondent is the registered proprietor of the trademark 'BEVETEX' ['Respondent's mark'], which was applied for registration in 1983, and the certificate of registration was received in 1990 in Class 5. However, the Respondent admittedly did not use the mark for over three (3) decades and only commenced use of 'BEVETEX' in 2015 for its product which is also an anti-cancer drug but contains the molecule 'Paclitaxel', a chemical cytotoxic agent used after failure of combination chemotherapy for mBC or relapse within 6 months of adjuvant chemotherapy. 'BEVETEX' is a Schedule H drug, distinct in composition and nature from the Appellant's biological product 'BEVATAS'.

2.5 Within a year of the Respondent's launch of 'BEVETEX', the Appellant introduced 'BEVATAS' in October 2016. It is stated that 'BEVATAS' was independently coined by combining 'BEVA' taken from 'Bevacizumab' and 'TAS' from its corporate name, Intas.

2.6 The Respondent learnt about the Appellant's trademark application for 'BEVATAS' in October 2016 and filed an opposition for the same on 27.12.2016. It further claims to gain knowledge of the Appellant's product only in October 2017, following which it instituted the present suit in December 2017.

2.7 The underlying suit was initially heard by the Additional District Judge, South- East District, Saket Courts, Delhi ['Trial Court']. The Respondent's application for interim injunction under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 ['CPC'] was refused at the ex-parte stage and was subsequently dismissed by a detailed order dated 17.09.2018, holding that the marks 'BEVATAS' and 'BEVETEX' were structurally, phonetically, and visually different and that no prima facie case of infringement or passing off was made out in view of the distinction in the character, mode of administration and other distinct factors in the two drugs. This order was upheld by an Appellate Bench of this Court on 09.01.2020 ['Appellate Court'], and the Respondent's Special Leave Petition ['SLP'] was dismissed by the Supreme Court on 14.02.2020.

2.8 After completion of evidence and trial, and following revaluation of the reliefs in the suit, the matter was transferred to the Original Side IP Division of this Court due to enhancement of pecuniary value of the reliefs. During trial, the Respondent gave up its claim for damages and pursued the suit purportedly in public interest.

2.9 By the impugned judgment dated 28.03.2026, the learned Single Judge decreed the suit in favour of the Respondent and permanently restrained the Appellant from using the mark 'BEVATAS', holding it to be deceptively similar to the mark 'BEVETEX' and likely to cause confusion in the minds of the consumers.

2.10 Aggrieved by this reversal of the earlier interim findings and the grant of a permanent injunction, the Appellant has preferred the present appeal.

Submissions by the Appellant

3. Mr. Sandeep Sethi and Mr. Amit Sibal, learned senior counsels for

the Appellant submit that the marks 'BEVATAS' and 'BEVETEX' are neither visually, structurally nor phonetically similar when considered as a whole. They argued that both marks differ in their prefixes ('BEVA' vs. 'BEVE') and suffixes ('TAS' vs. 'TEX') and are associated with entirely different active ingredients/chemical compounds that is 'Bevacizumab' and 'Paclitaxel', respectively.

3.1 They submit that the learned Single Judge erred in dissecting the marks into parts rather than assessing them holistically, contrary to settled principles of the Trade Marks Act, 1999 ['Act']. They further contend that earlier judicial findings at multiple stages, including the Trial Court, Appellate Court, had consistently held that there was no similarity which could lead to likelihood of confusion between the competing marks.

3.2 They submit that on facts, the Appellant asserts honest and bona fide adoption of the mark 'BEVATAS' in 2016, derived from the drug name 'Bevacizumab' and its corporate name 'Intas'. They submit that the product was launched in October 2016 and has been in continuous use since then, and that despite extensive and concurrent use, there has been no instance of any actual confusion between the rival marks, reported in the market. They also rely upon the differences in the phonetics, structure, packaging, active ingredients/chemical compound, and therapeutic profiles of 'BEVATAS' and 'BEVETEX' to deny any similarity or likelihood of confusion.

3.3 They further argue that the learned Single Judge misapplied the test for deceptive similarity and likelihood of confusion between the rival marks, particularly by relying mechanically on the **Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.**[1] ['**Cadila-2001**'] judgment without

[1] (2001) 5 SCC 73

appreciating its contextual application. They contend that critical factors such as the nature of the drugs, their distinct compositions, modes of administration, pricing differences, and the specialized class of purchasers, namely Oncologists and trained medical professionals, were ignored. They submit that both drugs of the rival parties are Schedule H prescription medicines administered intravenously under strict medical supervision, eliminating any realistic possibility of confusion.

3.4 They submit that the impugned judgment erred in disregarding binding Division Bench precedents of this Court, all rendered post **Cadila-2001** and specifically in the context of Schedule H prescription drugs. For substantiating this arguments, reliance is placed on **Sun Pharmaceuticals Laboratories Ltd. v. Hetero Healthcare Ltd. and Another**[2] (LETROZ/LETERO), **Sun Pharmaceuticals Industries ltd. v. Anglo French Drugs & Industries ltd. & Anr**[3] (OXETOL/EXITOL), **Schering Corporation & Ors v. Alkem Laboratories Ltd.**[4] (TEMODAL/TEMODAR vs TEMOKEM/TEMOGET), and **Astrazeneca UK Limited & Anr v. Orchid Chemicals & Pharmaceuticals ltd.**[5] (MERONEM/MEROMER), wherein despite phonetic similarities, no likelihood of confusion was found given, the nature of the drugs, their therapeutic use, and the modes of administration. They submit that these decisions, correctly apply the heightened standard under **Cadila-2001** (supra) by factoring in that, such drugs are prescription-based, administered under medical supervision, and targeted at specific ailments like cancer or serious infections, thereby substantially minimizing confusion. It is further

[2] 2022 SCC OnLine Del 2580
[3] 2014 SCC OnLine Del 4716
[4] 2009 SCC OnLine Del 3886
[5] ILR (2007) I Delhi 874

clarified that **Sun v. Anglo French** (supra) was not set aside by the Supreme Court but merely settled inter se, and hence its reasoning continues to hold precedential value.

3.5 They contend that, in contrast, the Respondent's cited judgements are wholly distinguishable on facts and law. The principal reliance on **Glenmark Pharmaceuticals Ltd. v. Sun Pharma Laboratories Ltd.**[6] (ISTAMET/INDAMET) is misplaced as it involved self-administered drugs with different compositions, forms, and required no hospital-based intravenous administration, unlike the present case. They submit that similarly, the other cited cases; **United Biotech Pvt. Ltd. v. Orchid Chemicals & Pharmaceuticals Ltd.**[7], **Sun Pharma Laboratories Limited v. BDR Pharmaceuticals International Pvt. Ltd. & Anr.**[8], **Novartis AG v. Crest Pharma Pvt. Ltd. and Anr.**[9] and **Nutrica Pusti Healthcare Pvt. Ltd. v. Morepen Laboratories Ltd.**[10], either pertain to rectification proceedings, or involve identical active ingredients/indications, concern marks with minimal differentiation, or turn on findings of dishonest adoption and factual circumstances such as copying or prior use. They additionally submit that, these cases largely involved drugs that are not administered under strict specialized supervision or are not comparable to the present category of IV (intravenous) infused, hospital-administered drugs. On this basis, they argue that none of the Respondent's judgments support the finding on confusion for the present case.

3.6 They submit that the Respondent failed to produce any credible

[6] 2024 SCC OnLine Del 2707
[7] 2012 SCC OnLine Del 2942
[8] 2020 SCC OnLine Del 623
[9] 2009 SCC OnLine Del 4390
[10] 2021 SCC OnLine Del 263

evidence of actual confusion, and its witness admitted in cross-examination that no such instance existed.

3.7 They argue that the Respondent did not discharge its burden of proving deceptive similarity and relied only on self-serving statements without substantiation. They also contend that the element 'BEV/BEVA' is publici juris, being derived from the generic drug name and is commonly used in the pharmaceutical trade, while the suffix 'TAS' is distinctive of the Appellant.

3.8 On the aspect of public interest, they contend that the Respondent's suit is selectively targeted and not bona fide, especially when several other similar marks exist in the same trade channel for anti-cancer drug containing the molecule 'Bevacizumab'. They submit that discontinuation of 'BEVATAS' would adversely impact thousands of cancer patients, as the drug is a biologic product that cannot be easily substituted without medical risks; therefore, larger public interest lies in permitting continued use of the Appellant's mark.

Submissions of the Respondent

4. Mr. Sachin Gupta, learned counsel for the Respondent submits that the marks 'BEVATAS' and 'BEVETEX' are deceptively similar, as correctly held by the learned Single Judge. He contends that the earlier interim findings of the Trial Court and Appellate Court, holding no likelihood of confusion, are not determinative, particularly in light of subsequent legal developments such as **Nutrica Pusti v. Morepen** (supra) and **Glenmark v. Sun Pharma** (supra), which reaffirm that in pharmaceutical cases even the slightest possibility of confusion is sufficient, and factors like packaging, dosage, or mode of administration are

immaterial. Relying on **Cadila-2001** (supra), he argues that the test is that of an average person with imperfect recollection, and not particularly a specialist such as an Oncologist, and that confusion may occur at multiple levels, including at the levels of chemists or paramedical staff, especially given illegible prescriptions and the serious, potentially fatal consequences of administering the wrong drug.

4.1 He further submits that the impugned judgment correctly applies the anti-dissection rule and finds structural and phonetic similarity between the competing marks. He refutes the Appellant's reliance on differences in composition, therapeutic use, or administration, arguing that such technical distinctions are irrelevant to the test of deceptive similarity in pharmaceutical products.

4.2 On public interest, he submits that the dispute is only with respect to the infringing rival marks and not the two drugs itself, which can be marketed under an alternative name, and that several other manufacturers are already supplying the same drug. He submits that the two drugs are fundamentally distinct in their composition, indication, administration and dosage, and are therefore, not therapeutic substitutes to each other.

4.3 He submits that the Appellant's claims of urgency, prejudice to patients, and regulatory hurdles are stated to be exaggerated and misleading, particularly since no fresh license is required for a name change and the Appellant already uses an alternate brand. He also submits that the Appellant's continued use of the impugned mark 'BEVATAS' since institution of the underlying suit has been at its own risk and cannot create any equity in its favour.

4.4 He distinguishes the case law relied upon by the Appellant; such as

Sun Pharmaceuticals v. Hetero Healthcare (supra), **Schering v. Alkem Laboratories** (supra), **Astrazeneca v. Orchid Chemicals** (supra), **Sun v. Anglo French** (supra), and **Gufic Ltd. v. Clinique Laboratories, LLC & Anr**[11]; on the ground that they are either interim orders or involved identical salts for the same ailment, or pertain to non-pharmaceutical products, and have in any event been distinguished in **Glenmark** (supra). In contrast, he relies on judgments such as **United Biotech v. Orchid Chemicals** (supra), **Sun Pharma v. BDR Pharmaceuticals** (supra), and **Novartis AG v. Crest Pharma** (supra), to demonstrate that even in cases involving intravenous or prescription drugs, Courts have consistently found deceptive similarity despite differences in formulation, administration, or composition, emphasizing that even slightest possibility of confusion, particularly in medicinal products, warrants injunction due to the serious risks it contains against public health.

Findings and Analysis

5. This Court has heard the learned counsel for the parties at length and has perused the record, including the pleadings, impugned judgment, and the Trial Court record.

6. In the order dated 06.04.2026 passed by this Court, paragraph 8 of the order records the statement of Respondent that the Respondent would stand satisfied if the Appellant changed the name of its drug from 'BEVATAS' to 'BEVAINTAS'. However, owing to a typographical error, the changed name came to be recorded as 'BEVAITAS' instead of 'BEVAINTAS'. Accordingly, the said order stands corrected to the aforesaid extent.

7. The present proceedings arise by way of a Regular First Appeal

[11] 2010 (43) PTC 788

['RFA'] under Section 96 CPC, challenging the impugned judgment whereby the learned Single Judge held that the Appellant's mark 'BEVATAS' infringed the Respondent's mark 'BEVETEX'. The core issue giving rise to the present appeal is whether the learned Single Judge was justified in decreeing the suit for trademark infringement by holding that the Appellant's mark 'BEVATAS', used for an anti-cancer drug containing the molecule 'Bevacizumab', was deceptively similar to the Respondent's registered mark 'BEVETEX', thereby causing a likelihood of confusion on the part of public.

This Court is therefore required to adjudicate whether the impugned judgment correctly applied the legal principles governing infringement in trademark disputes related to pharmaceutical goods, particularly in the light of the principles laid down in precedents.

Since the appeal arose from a post-trial judgment, this Court is required to re-appreciate the pleadings, documentary evidence and admissions on record to determine: (i) whether the two drugs are identical, similar or dissimilar; (ii) whether the marks 'BEVATAS' and 'BEVETEX' are deceptively similar when assessed as a whole; (iii) whether any real likelihood of confusion has been established amongst the relevant class of purchasers, namely Oncologists, chemist, trained nurses and patients/attendants; and (iv) whether the Respondent had, in fact, established a legally sustainable cause of action for infringement.

8. We now proceed to examine the aforesaid issues.

I. Respondent to its knowledge had no cause of action to maintain the underlying suit for passing off and unfair competition.

9. The plaint in the present suit has been framed in a broadest manner

possible, pleading multiple causes of action under both statute and common law. The Respondent not only alleged infringement of its registered trademark 'BEVETEX' under the Act, but also advanced claims of passing off and, unfair competition based on alleged reputation and goodwill in its mark 'BEVETEX' as well as sought consequential reliefs of permanent injunction, damages, rendition of accounts, and other monetary remedies. These multiple causes of action were pleaded at paragraph 21 of the plaint which reads as under:

> "21. The Defendant's act thus constitutes:
>
> A. INFRINGEMENT OF TRADE MARK:
> The Defendant's impugned trade mark BEVATAS is visually, structurally, as well as phonetically **similar** to the Plaintiff's registered trade mark BEVETEX and hence its use is likely to cause confusion and deception. Such use of the trade mark BEVATAS by the Defendant constitute infringement of Plaintiff's trade mark BEVETEX registered under No. 410744 dated 16.09.1983. Any **unauthorised use thereof of similar mark** by any unauthorised trader would also inevitably lead to erosion of distinctiveness of the registered trade mark BEVETEX, of the Plaintiff which constitutes a violation of the Plaintiff's statutory right of exclusive use and infringement of registered trade mark BEVETEX under Section 29 of The Trade Marks Act, 1999.
>
> B. PASSING OFF:
> The trade mark BEVETEX has been extensively and commercially used by the Plaintiff in the course of trade since December 2015 on account of which it has acquired formidable **goodwill and reputation** as a badge of quality products originating from the Plaintiff. The Plaintiff's mark BEVETEX is the leading brand as is evident from the statement of sales and expenses as given above.
>
> The use of the impugned mark BEVATAS by the Defendant amounts to **acts of misrepresentation, misappropriation and passing off** of the Defendant's goods for those of the Plaintiff for the reasons stated above. The use of the impugned mark BEVATAS by the Defendant, therefore being an actionable tort, is liable to be injuncted under the provision of Section 135 of the Trade Marks Act.
>
> D. UNFAIR COMPETITION
> The use of the impugned trade mark BEVATAS by the Defendant is **malafide, and is against public interest**. The impugned mark is capable to creating confusion and deception. It has to be kept in the mind that a **chemist** may give out the wrong drug on account of confusion or on account of having no stock of the other brand

thinking that both are cancer drugs. Wrong administration of the either drug to a patient can create havoc and can prove fatal. The Plaintiff is, therefore, entitled to an order of injunction restraining the Defendant from continuing with their unlawful, unfair and unethical acts of passing off and unfair competition."

[Emphasis Supplied]

10. In the plaint, it was specifically contended that Appellant's use of the impugned mark 'BEVATAS' has led to Appellant earning profits by misappropriating the intellectual property rights of the Respondent, including goodwill and reputation vested in the Respondent's trademark 'BEVETEX'. This substantive plea was raised in the plaint at paragraph 22, which reads as under: -

> "22. The Defendant is also liable to be injuncted urgently so as to protect the public interest at large. The consumers ought to be protected against confusion or deception qua source of drugs originating from the Plaintiff. The **profits earned by the Defendant by misappropriating intellectual property rights belonging to the Plaintiff, including the goodwill and reputation that vest in the trade mark BEVETEX is liable to be reimbursed to the Plaintiff by directing the Defendant to render truthful accounts of profits by this Hon'ble Court**. Furthermore, apart from the injury to the Plaintiff, it is the injury to the purchasing public which is being misled into purchasing the goods of the Defendant that has to be urgently protected by this Hon'ble Court. The injury to the goodwill and reputation of the Plaintiff and to the members of the purchasing public can in no way be assessed, quantified or compensated and, therefore, the illegal trade activities of the Defendant ought to be restrained immediately by an order of injunction passed by this Hon'ble Court."
>
> [Emphasis Supplied]

11. In the aforesaid quoted paragraph nos. 21(D) and 22 of the plaint, the Respondent also contended that permanent injunction was necessary to protect the public interest at large, though the reasons pleaded in both the paragraphs are distinct.

12. The reliefs sought in the plaint, emanating from the aforesaid pleas, are as under: -

> 26. It is therefore, most respectfully prayed that this Hon'ble Court

may be pleased to grant the following reliefs in favour of the Plaintiff and against the Defendants:

a) A **decree for permanent injunction** restraining the Defendant, its directors, assignees in business, distributors, dealers, stockists, retailers/ chemists, servants and agents from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal preparations under the impugned mark BEVATAS or any other trade mark as may be **deceptively similar** to the Plaintiff's registered trademark **BEVETEX** amounting to **infringement of** trademark registered under No. 410744 of the Plaintiff;

(b) A **decree for permanent injunction** restraining the Defendant, its directors, assignees in business, distributors, dealers, stockists, retailers/chemists, servants and agents from manufacturing, selling, offering for sale, advertising directly or indirectly dealing in medicinal preparations under the impugned trade mark **BEVATAS** or any other trade mark as may be deceptively similar with Plaintiff **BEVETEX** trade mark amounting to **passing off** of the Defendant's goods and business for those of the Plaintiff;

(c) An order for **delivery of the infringing goods** of the Defendant including impugned packaging, promotional materials, stationery, dyes, blocks etc. bearing the impugned trade mark BEVATAS to an authorised representative of the Plaintiff for destruction/erasure;

(d) an order for **rendition of accounts of profit** illegally earned by the Defendant and a decree for an amount so found due;

(e) An order for costs in the proceedings;

[Emphasis Supplied]

13. However, during the course of the trial, the Respondent expressly represented that it is prosecuting the suit solely in 'public interest' and has 'no commercial interest' in the matter. Thus, the Respondent on its own accord unequivocally abandoned its claim for all monetary reliefs, and consequently, also abandoned its relief of passing off, misrepresentation, unfair competition, misappropriation of reputation and goodwill in its mark 'BEVETEX'.

14. The Respondent took the stand that 'it has no commercial interest in the suit' in its rejoinder to the Order XXXIX Rule 1 and 2 CPC application filed on 29.01.2018 and this was also recorded at the hearing[12] of its application under Order XXXIX Rule 1 and 2 CPC, before the Trial Court, which dismissed the said injunction application. The same stand was reiterated before the Appellate Court, in FAO 447/2018[13], in the appeal filed against dismissal of the injunction application.

Also, in the affidavit[14] of evidence dated 08.02.2019 filed by its witness PW-1, the Respondent categorically deposed that the suit was being pursued purely in 'public interest' and that it had 'no commercial interest'. In the cross-examination[15], PW-1 reiterated that Respondent has 'no commercial interest'.

15. The Respondent clarified its stand of 'no commercial interest' to explain that since the Appellant manufactures the anti-cancer drug 'BEVATAS' from the molecule 'Bevacizumab' and the Respondent does not manufacture any anti-cancer drug from the molecule 'Bevacizumab', and hence it has no commercial interest in seeking an injunction against the Appellant. The relevant para of its affidavit of evidence reads as under: -

> "22. I say that the instant suit has been filed in public interest and that the Plaintiff has no commercial interest considering the plaintiff do not sell any medicine containing the **salt Bevacizumab**, which the Defendant's medicine contained."

So also, the relevant paragraph of the judgment dated 17.09.2018 reads as under: -

[12] Paragraph 3.3 of the judgment dated 17.09.2018 passed by the Trial Court.
[13] Paragraph 27 of the judgment dated 09.01.2020 passed by the Appellate Court.
[14] Paragraph 22 of affidavit of evidence of PW-1.
[15] Answer to question no. 37 of the cross-examination of PW-1.

> "3.3 That the Plaintiff has no commercial interest – case is filed purely in Public interest as the plaintiff do not sell the salt or the medicine which the defendant is selling."

16. The stand taken by the Respondent in its rejoinder, affidavit of evidence as well as during the hearing of the injunction application, regarding 'no commercial interest', constitutes a clear admission that it had not suffered any commercial loss or diversion of sales in relation to its anti-cancer drug 'BEVETEX'. Consequently, the allegations pertaining to passing off, unfair competition, misrepresentation, misappropriation of goodwill and reputation, etc., were devoid of any factual foundation. Significantly, the said stand was based on facts already within the Respondent's knowledge prior to the institution of the suit and not on any subsequent discovery. This establishes that the allegations of any monetary losses in the plaint were false and were pleaded to create an illusion of cause of action and a false sense of urgency.

17. In our considered opinion, the Trial Court, after perusing the Respondent's stand in its rejoinder to the Order XXXIX Rule 1 and 2 application and again during oral arguments as recorded in the order dated 17.09.2018, ought to have rejected such a vexatious plaint, wherein the Respondent/plaintiff had alleged a cause of action on pleas which were false to its knowledge. Proceeding to trial on such a plaint, which is ex-facie vexatious and lacks merit, in view of the admissions of the plaintiff, emboldens a dishonest litigant and encourages frivolous litigation. [Re: **ITC Ltd. v. Debts Recovery Appellate Tribunal**[16]]

18. Even before the learned Single Judge, the Respondent did not press for its reliefs qua passing off, unfair competition, misappropriation of

[16] (1998) 2 SCC 70, at paragraph nos. 16 and 17.

goodwill and reputation, rendition of accounts, etc. The Respondent sought to limit its cause of action to seek the relief of injunction only on the grounds of infringement due to the alleged deceptive similarity between the rival marks on the sole ground of public interest to prevent confusion or deception in the market. Thus, only prayer clause (a) of the plaint was pressed for adjudication before the learned Single Judge at the stage of final disposal of the suit.

Learned Single Judge at paragraph 45 and 48 of the impugned judgment recorded the submission of the Respondent that the suit is being pursued in public interest and this was also the basis for not awarding any monetary reliefs. Relevant paragraphs of the impugned judgment read as under: -

> "45. In view of the above findings, the Plaintiff is entitled to a relief of permanent injunction against the use of the Mark 'BEVATAS' with respect to pharmaceutical drugs. As the Plaintiff has submitted that the present Suit is in Public Interest, the Plaintiff has given up its claim for damages and rendition of accounts against the Defendant as stated in Paragraph No. 22 of the Plaintiff's Replication to the Defendant's Reply to the Application under Order XXXIX Rules 1 and 2 of the CPC, which is referred in Paragraph No. 10 of the Written Submissions dated 29.05.2025. Accordingly, no direction is required to be passed regarding damages and rendition of accounts.
>
> …..
>
> 48. As the Plaintiff has stated that this Suit is in Public Interest, there shall be no order as to costs."
>
> [Emphasis Supplied]

19. In the considered opinion of this Court, the aforesaid stand taken by the Respondent in its rejoinder, oral submissions and affidavit of evidence, constitutes a clear acknowledgment that the two drugs are neither interchangeable nor therapeutic substitutes in the market and are, therefore, dissimilar. This admission fundamentally undermines the original pleas in

the plaint alleging passing off, unfair competition, misappropriation of goodwill and reputation, erosion of distinctiveness, diversion of trade, and consequential monetary loss.

The dissimilarity of the molecule of two drugs was a fact known to the Respondent prior to filing the suit and yet the Respondent vexatiously alleged passing off, unfair competition, misrepresentation and misappropriation of goodwill and reputation etc., of its mark 'BEVETEX', in the plaint with the intention to claim monetary damages.

By expressly abandoning its claims for damages, rendition of accounts and other commercial remedies, the Respondent effectively gave up its pleaded case that it had acquired substantial goodwill and reputation in the mark 'BEVETEX' between 2015-2016 and that the Appellant had adopted the mark 'BEVATAS' in 2016 with an intention to ride upon or encash such goodwill.

The Respondent's own stand, therefore, amounts to an admission that the Appellant's use of the impugned mark 'BEVATAS' neither caused diversion of sales nor diluted the Respondent's reputation or goodwill, nor created any trade association between the two drugs in the market.

20. The plaint in a commercial suit is required to be verified by a Statement of Truth in terms of Order VI Rule 15(A) CPC, whereby the plaintiff affirms that the pleadings are true to its knowledge and belief and do not contain false statements. In the present case, the Respondent, a well-established pharmaceutical company fully conversant with trademark litigation and the procedural obligations governing institution of suits, pleaded multiple causes of action including passing off, misappropriation of goodwill and reputation, unfair competition, rendition of accounts and

monetary reliefs, despite being fully aware that its drug and the Appellant's drug were distinct, only to create an illusory cause of action to seek interim injunctive relief.

21. The Respondent, while instituting the underlying suit, combined multiple causes of action, as permissible under Order II Rule 3 CPC. However, the Respondent's subsequent admissions, both in pleadings and evidence, unequivocally establish that, apart from its plea of infringement founded on alleged deceptive similarity of the rival marks, it was fully aware that it had no subsisting commercial cause of action in relation to other reliefs i.e., passing off, misrepresentation, misappropriation of goodwill, unfair competition or monetary loss. In such circumstances, the Respondent ought to have instituted the suit, at the very inception, only on the limited cause of action of alleged infringement, premised on its alleged belief that the rival marks were deceptively similar, instead of incorporating additional causes of action which, to its own knowledge, were unavailable in law and on facts.

It is also pertinent to note here that even the averments in the plaint concerning the alleged cause of action for infringement are also vague, ambiguous and lacking in material particulars, as discussed in detail in the subsequent part of this judgment. This further demonstrates that the Respondent instituted the underlying suit without a clear and definite factual foundation even for its claim of infringement and sought to maintain the proceedings on broad and uncertain pleadings.

22. Where a plaint is demonstrably vexatious and founded upon pleas which the plaintiff itself knows to be untenable, the Court ought not to permit such plaint to proceed merely because one of the pleaded causes of

action may, prima facie, disclose a triable issue. The incorporation of knowingly untenable allegations and reliefs prejudices the fairness of the trial process and amounts to an abuse of the process of law. A litigant who institutes proceedings on the basis of pleas subsequently admitted to be untenable cannot be permitted to continue trial on such vexatious pleadings, as doing so would encourage frivolous and dishonest litigation and dilute the sanctity of pleadings verified on oath under the Statement of Truth as per the Commercial Courts Act, 2015, as is evident in the present matter which has led litigants like a pharmaceutical giant to have absolutely no fear or concern of making false statements in pleadings filed before the Court. The remedies of perjury or contempt are not exhaustive of the powers available to the Court while dealing with a plaint which is ex facie vexatious and founded upon knowingly false or unsustainable assertions.

23. It is well settled that the causes of action for infringement and passing off are distinct and independent remedies, though they may, in an appropriate case, be joined in one suit under Order II Rule 3 CPC. However, where the plaintiff is aware, at the time of institution of the suit, that the factual foundation necessary to maintain a claim for passing off, misappropriation of goodwill, unfair competition or allied commercial reliefs is absent, the joinder of such causes of action would render the plaint vexatious to that extent. In such circumstances, the Trial Court ought to exercise its jurisdiction to reject such a plaint.

24. The rejection of the plaint on account of the vexatious pleas relating to passing off, misappropriation of goodwill and reputation, unfair competition and other monetary claims would not extinguish the Respondent's independent remedy, if any, in respect of its pleaded claim of

infringement. In view of Order VII Rule 13 CPC, such rejection would not preclude the Respondent from instituting a fresh suit in accordance with law confined to the alleged cause of action of infringement. Further, since trademark infringement constitutes a recurring and continuing cause of action, rejection of the plaint in its present form would cause no prejudice to the Respondent, while at the same time preserving the sanctity of pleadings and procedure, mandated by law. [Re: **Bengal Waterproof Limited v. Bombay Waterproof Manufacturing Company and Anr.**[17]]

25. Pertinently, in the facts of this case, even when the Respondent filed an application dated 01.08.2022 seeking amendment of the plaint for enhancement of pecuniary valuation so as to bring the suit within the pecuniary jurisdiction of the High Court, it did not choose to delete or withdraw the pleas relating to passing off, misappropriation of goodwill and reputation, unfair competition and other commercial reliefs. This omission assumes significance because, by that stage, the Respondent had already repeatedly asserted that it had 'no commercial interest' in the matter on account of the distinction of the two drugs. Despite such admitted position, the Respondent persisted with pleadings which it knew to be untenable. Such conduct reflects a disregard for the procedure of pleadings and the obligation cast upon litigants, particularly in commercial suits, to place truthful and legally sustainable assertions before the Court. The procedural requirements governing pleadings and verification are substantive safeguards intended to uphold fairness and the principles of natural justice and, cannot be treated as perfunctory. A plaintiff cannot, therefore, be

[17] (1997) 1 SCC 99, at paragraph no. 10.

permitted to proceed to trial on pleas which it subsequently admits were unavailable to it in law and on facts.

26. In view of the aforesaid discussion, the finding returned by the learned Single Judge on Issue No. 8 is set aside. We hold that, on the Respondent's own admissions, the plaint was vexatious insofar as it pleaded causes of action relating to passing off, misappropriation of goodwill and reputation, unfair competition and other monetary claims despite the absence of any subsisting commercial interest or factual foundation for such reliefs. Consequently, the Trial Court ought not to have permitted the plaint, in its existing form, to proceed to trial.

II. Respondent's overbroad plaint to claim infringement and this Court's delineation of the dispute to Section 29(2)(b) of the Act

27. Respondent has limited its prayer for seeking relief of permanent injunction on the claim of infringement alone. It, therefore, needs to be examined, what are the facts pleaded in the plaint for setting up the cause of action for pleading infringement.

28. A claim for infringement is defined under Section 29 of the Act, more specifically in sub-sections (1) to (5), (7) and (8). These are independent sub-sections, which apply to distinct factual matrix and therefore the registered proprietor of a trademark alleging infringement has to necessarily plead the necessary facts in the plaint, which constitute its cause of action for invoking the appropriate sub-section.

29. In terms of Order VI Rule 2 CPC, for cases falling under Section 29(2) of the Act, a plaintiff alleging infringement is required to specifically plead material facts asserting (i) whether the rival marks are identical or similar, and (ii) whether the goods or services covered by the rival marks are

identical or similar; and (iii) whether the rival marks are likely to cause confusion on the part of public or whether the rival mark is likely to have an association with the registered mark. These are the foundational facts constituting the cause of action in an infringement suit and would determine the application of relevant sub-clause of Section 29(2) of the Act and if the presumption of Section 29(3) of the Act can be attracted. The facts necessary for pleading infringement under Section 29(1), 29(4), 29(5) and 29(8) of the Act are distinct and must be specifically pleaded for disclosing a cause of action.

However, the plaint, in this suit, falls short of clearly setting out the stand of the Respondent on the aforesaid crucial facts and conspicuously fails to specify even the specific sub-section of Section 29 of the Act under which infringement is alleged.

30. In the plaint, which is subject matter of this appeal, the plea of infringement has been pleaded at paragraph 21(A). The paragraph makes reference to Section 29 of the Act and does not refer to any specific sub-section, keeping it deliberately vague. In this paragraph, the Respondent alleges that the Appellant's use of the impugned mark 'BEVATAS' erodes the distinctiveness of the Respondent's mark 'BEVETEX', an allegation which invokes ingredient of Section 29(4) of the Act. However, Section 29(4) is only applicable when the goods are not similar to the goods for which the trademark is registered for, but this is not the case argued by the Respondent. For reference, paragraph 21(A) of the plaint, which sets out the stand of the Respondent on infringement reads as under: -

> "21. The Defendant's act thus constitutes:
>
> A. INFRINGEMENT OF TRADE MARK:
> The Defendant's impugned trade mark BEVATAS is visually, structurally,

> as well as phonetically **similar** to the Plaintiff's registered trade mark BEVETEX and hence its use is likely to cause confusion and deception. Such use of the trade mark BEVATAS by the Defendant constitute infringement of Plaintiff's trade mark BEVETEX registered under No. 410744 dated 16.09.1983. Any **unauthorised use thereof of similar mark** by any unauthorised trader would also inevitably lead to erosion of distinctiveness of the registered trade mark BEVETEX, of the Plaintiff which constitutes a violation of the Plaintiff's statutory right of exclusive use and infringement of registered trade mark BEVETEX under **Section 29 of The Trade Marks Act, 1999**.
>
> [Emphasis Supplied]

31. At paragraph 18 of the plaint, the Respondent has set out a comparison table of the two drugs. In this table, the Respondent admits that the Appellant's drug is a distinct category of anti-cancer drugs, for patients having different medical indications. However, the plaint fails to definitely assert whether in the opinion of the Respondent, the goods are identical or similar or dissimilar.

In our considered opinion, failure of the Respondent/plaintiff to specifically plead this material and foundational fact, as regards the nature of the goods and services, would ordinarily constitute a valid ground for rejection of the plaint for non-disclosure of a cause of action in relation to the claim of infringement. However, since the matter has proceeded to trial and evidence has already been led by the parties, we are not inclined to reject the plaint solely on this ground and instead proceed to examine the Respondent's stand regarding the alleged similarity or identity of the two drugs in question. We clarify, however, that it is not for the Court to infer or ascertain such foundational facts in the absence of clear pleadings, and the same ought to have been unequivocally asserted in the plaint itself.

Since the table set out in paragraph 18 of the plaint itself clearly demonstrates that the two drugs are separate and distinct, we are of the

considered opinion that the said drugs cannot be regarded as identical. At best, they may be considered similar only in the broad sense that both fall within the same Nice Classification of 'medicinal and pharmaceutical preparations' under Class 5.

32. Respondent has pleaded in the plaint at relevant paragraph 21(A) that the rival marks are similar. In these alleged facts, the Respondent ought to have plainly pleaded the claim for infringement under Section 29(2)(b) of the Act, however, the plaint does not specifically plead sub-section (2)(b) and pleads Section 29 of the Act, which is inexact, intentional and mischievous.

33. This Court is of the considered view that the vague and overbroad pleadings in the plaint appears to have been consciously adopted so as to enable the Respondent to shift its pleas across different sub-sections of Section 29 at the different stages of addressing arguments, even though the sub-sections of Section 29 are mutually exclusive. Such drafting of the plaint defeats the mandate of Order VI Rule 2 CPC, which requires material facts to be pleaded with precision so as to not prejudice the trial and ensure compliance of principles of natural justice. An overbroad plaint not only obscures the precise statutory basis of the claim of infringement but also prejudices the defendant who is unaware about the precise basis of the plaintiff's claim and may therefore be unable to answer the claim accurately. It also leads to difficulty for the Court while framing the issues of fact and law arising between the parties.

34. For instance, during final arguments before the learned Single Judge, as recorded at paragraph 8.12 of the impugned judgment, the Respondent in its oral submissions sought to rely upon Section 29(3) of the Act for

maintaining the plea of infringement, contending that the Court must presume likelihood of confusion on the part of the public between the two drugs. The Respondent's reference to Section 29(3) of the Act would necessarily mean that learned counsel for the Respondent was pleading infringement in terms of Section 29(2)(c) of the Act, which would mean that the Respondent's contention before the learned Single Judge was that both the rival marks and goods (i.e., the two drugs) are identical.

However, this contention is factually incorrect and unsustainable in the admitted facts of this case. The marks are not identical, so also the goods are not identical. Thus, Respondent could not have even argued that presumption of Section 29(3) of the Act should be applied to the facts of this case.

In the present appeal, during arguments, the Respondent has taken yet another position, contending that the rival marks are deceptively similar[18] and that the two drugs, though not a therapeutic substitute for each other, are yet pharmaceutical preparations for cancer patients and therefore similar in nature. These submissions of the Respondent prove that Section 29(2)(c) and Section 29(3) of the Act are inapplicable to the facts of the case and therefore the arguments raised before the learned Single Judge urging the application of Section 29(3) of the Act was incorrect.

35. Before proceeding to examine the merits of the rival contentions, it is necessary to delineate the precise statutory provision governing the present controversy, particularly in the light of the shifting stands adopted by the Respondent.

36. The Respondent in its plaint and written submissions (which are

[18] Paragraph 4 of the written submissions dated 08.04.2026.

beyond pleadings) alleges infringement under Section 29(2), 29(3) as well as Section 29(4) of the Act. This approach is legally untenable, as Section 29(2)(a), 29(2)(b), 29(2)(c), 29(3) and Section 29(4) operate in distinct and mutually exclusive factual domains. While Section 29(2)(a) and 29(2)(b) applies to identical or similar marks used in relation to identical or similar goods or services, statutory presumption of Section 29(3) is attracted only when the factual requirements of Section 29(2)(c), namely identical marks and identical goods, are satisfied, and, Section 29(4) is attracted only where identical or similar marks are used in relation to dissimilar goods or services for which the plaintiff's trademark is registered and has reputation, in India.

37. In the admitted factual matrix of the present matter, the rival marks are not identical, and the goods are also not identical. Consequently, the statutory presumption of likelihood of confusion under Section 29(3), is wholly inapplicable.

Equally, Section 29(4), which governs cases involving the use of rival marks in relation to dissimilar goods or services for which the trademark is registered and has reputation in India, has no application in the present case, as the Respondent has abandoned the plea of reputation specifically. So also, the Respondent's own pleadings, particularly paragraph 18 of the plaint, acknowledge that the two drugs, though differing in composition, indication, and mode of administration, fall within the broader category of anti-cancer drugs.

38. Section 29(2) and 29(3) of the Act reads as under: -

> (2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—
> (a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or

(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or
(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark,

is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

(3) In any case falling under clause (c) of sub-section (2), the Court shall presume that it is likely to cause confusion on the part of the public.

[Emphasis Supplied]

39. Upon a holistic consideration of the pleadings, the impugned judgment, and the submissions advanced before this Court, in our opinion the Respondent's claim for infringement has to be evaluated as per Section 29(2)(b) of the Act. The Respondent has contended that the marks are similar, the goods are similar and the use of the impugned mark 'BEVATAS' is to be injuncted in public interest so as to prevent confusion. These facts place the burden directly upon the Respondent to affirmatively establish likelihood of confusion on the part of the public.

III. Legal standard governing 'likelihood of confusion' where goods are not identical or closely similar, and failure of the Respondent to discharge its evidentiary burden

40. In view of the findings recorded hereinabove, the controversy in the present case is required to be examined strictly within the framework of Section 29(2)(b) of the Act, where the burden lies upon the Respondent to affirmatively establish that the alleged similarity of the rival marks, when used in relation to the two drugs, is likely to cause confusion on the part of the public. The Respondent itself, in paragraph 18 of the plaint, has acknowledged that the two drugs differ in composition, administration, and therapeutic indications and are therefore distinct pharmaceutical drugs. This factual position has remained undisputed throughout the proceedings. It is

also admitted by the Respondent's witness PW-1 in its cross-examination at question nos. 11, 19, 20, 21, 42 and 43.

41. In a case where goods are not identical or closely similar, the likelihood of confusion cannot be presumed and must be affirmatively established by evidence. As noted in authoritative commentary (P. Narayan, 'Law of Trade Marks and Passing Off')[19], where goods are not closely similar or dissimilar in character, the question of deception cannot be resolved by the Court merely by visual comparison of marks; in such cases it requires evidence, from the witnesses, as to how the marks operate in the market and are perceived by the relevant class of consumers. The relevant extract from the commentary reads as under: -

> 9.28. **Evidence of witnesses necessary** When the goods are the same the question of probability of deception depends mainly on the degree of resemblance between the marks which the Judge can decide by looking at the marks without any evidence to assist. But where goods are not closely similar in character evidence of witnesses is necessary.
>
> In Angus' Appln, where the marks were "Gaco" for goods manufactured from Indian-rubber and gutta percha, and "Stayco" for articles made from synthetic rubber, the court held that since no evidence as to the manner of trading under the respective marks was furnished, it was not possible to decide whether confusion was likely to occur.
> In Oscar Tm. [1979] RPC 173, where the opponents, the Academy of Motion Picture Arts and Sciences, were a non-profit-making Corporation which conferred awards known as 'OSCAR' on outstanding achievement in the motion picture industry, the opposition to the registration of the mark 'OSCAR' for radio and television apparatus failed under s. 11 as the opponents did not adduce evidence as to what members of the purchasing public would have thought on seeing the mark and what conclusion they would have drawn as to whether it was in some way connected with the Academy.
>
> [Emphasis Supplied]

42. The Respondent admits that the two drugs are prescribed by Oncologists for different indications (type of cancers). The Appellant's drug

[19] Narayanan, P. (2004) 'paragraph 9.28', in law of Trade Marks and Passing Off. Sixth Edition. Kolkata, West Bengal: Eastern Law House, p. 225.

is given by an Oncologist as a first line of treatment to the patient suffering from specific types of cancer including mBC whereas Respondent's drug is given by the Oncologist as a second line of treatment after failure of combination chemotherapy or relapse within six (6) months of adjuvant chemotherapy, for only mBC.

43. In the present case, where the anti-cancer drugs are not biosimilar, it was incumbent upon the Respondent to lead clear and cogent evidence during the trial, demonstrating that due to the alleged similarity of marks there is likelihood of confusion on the part of the relevant class of public in the course of trade. The principal issue requiring adjudication by the learned Single Judge was, therefore, whether the Respondent had discharged this evidentiary burden during trail, in accordance with law.

44. The Respondent's case, as pleaded in paragraph 21(D)[20] of the plaint, is found on 'public interest' argument, namely that confusion due to the rival marks is likely to arise at the level of an imaginary 'chemist', who may dispense the wrong drug on account of similarity of marks or lack of stock, potentially leading to fatal consequences for the patient.

Thus, the Respondent itself identified the relevant class of public person likely to be misled as 'chemist'. Significantly, the Respondent has not even pleaded that an Oncologist may be confused due to the rival marks while prescribing the drug.

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[20] D. UNFAIR COMPETITION
The use of the impugned trade mark BEVATAS by the Defendant is **malafide, and is against public interest**. The impugned mark is capable to creating confusion and deception. It has to be kept in the mind that a **chemist** may give out the wrong drug on account of confusion **or** on account of having no stock of the other brand thinking that both are cancer drugs. Wrong administration of the either drug to a patient can create havoc and can prove fatal. The Plaintiff is, therefore, entitled to an order of injunction restraining the Defendant from continuing with their unlawful, unfair and unethical acts of passing off and unfair competition.

45. It is an admitted position that the two drugs in question are prescribed exclusively by Oncologists and administered to the patient in a controlled medical environment in an oncology clinic by trained medical staff. In such a scenario, evidence from these professionals as regards similarity of marks would have been relevant to establish likelihood of confusion on the part of the public. The burden, therefore, lay on the Respondent to substantiate, through evidence, that such medical professionals are likely to be confused in the course of dispensing the two drugs. However, despite having identified chemists as the relevant class, the Respondent failed to examine any chemist or Oncologist or trained nurse, or paramedical professional, who are the actual participants in prescribing, dispensing, and administering the drugs to demonstrate likelihood of confusion on the part of the public.

46. Instead, the Respondent examined a single witness, PW-1 i.e., its Sales Manager, who parroted the plaint to aver that a 'chemist' is likely to be confused while vending the drug. The testimony of PW-1 on likelihood of confusion is confined to bald and unsubstantiated assertions. The said witness's testimony fails to establish any likelihood of confusion between the two drugs in the minds of the relevant section of the public i.e., the 'chemist' or the 'paramedic' administering the drug in an oncology clinic.

47. In a specialised field such as oncology in relation to prescription, administration and purchase of anti-cancer drugs, such a witness i.e., the Respondent/plaintiff's Sales Representative cannot be regarded as representative of the relevant class of public. The said witness's assertions, therefore, do not constitute legally sufficient evidence for establishing likelihood of confusion amongst the public between the two marks and was therefore not competent to depose on the facet of likelihood of confusion on

part of the public as he had no personal knowledge on this aspect.

48. Relevant deposition of PW-1 in its evidence affidavit is as under: -

> "18. I say that it is pertinent to note that the Defendant's medicine under the impugned mark although a cancer drug contains a different salt namely **BEVACIZUMAB** and is used for the treatment of Colorectal cancer, Ovarian cancer, Cervical cancer, Lung cancer and recurrent glioblastoma (a type of brain tumour). It is most respectfully submitted that wrong administration of the drug can prove fatal. Internet downloaded articles with respect to dispensation of wrong medicine proved fatal is already on record at page 50-52 filed vide list of documents dated 22.12.2017 and is filed once' again along with certificate under Section 65 B of the Indian Evidence Act dated 15.10.2018 and is exhibited as EXHIBIT PW-1/9 and EXHIBIT PW-1/10, respectively. A comparison between the competing drugs is enumerated below:

Product features	**Bevetex**	**Bevtas**	**Remarks**
Company	Sun Pharma	Intas	
What is the product	This is Paclitaxel Injection Concentrate for Nano dispersion	Monoclonal antibody, used as anti-angiogenic agent to treat various cancer indications	Very different class of drugs with different indications & mode of action
Presentation	vials of 100mg & 300mg	Vials 100mg & 400mg	Almost same
Dosage approved	260 mg/m2 to 295 mg /m2 every 21 days	10 to 15 mg/kg repeated every 2 or 3 weeks	
Route of administration	IV infusion	IV Infusion	Same
Effective dose based on BSA	400 mg	700 - 900 mg (2 vials or more of 400mg used). 100mg for titration	**400mg Bevetex & Bevetas can be confused at the pharmacy/para medical level**
Broadly recommended for	Metastatic breast cancer	1) Metastatic colorectal cancer, 2) Unresectable, locally advanced, recurrent or	Non overlapping indications, Patient may get wrong drug for

		metastatic non-squamous NSCLC 3) Recurrent glioblastoma 4) Metastatic renal cell carcinoma, 5) Recurrent or metastatic cervical cancer 6) Recurrent epithelial ovarian fallopian tube or primary peritoneal cancer that is; platinum resistant or platinum sensitive	the given indication. This may cause severe / life threatening complications with no tumor kill effect
Most common side effects	Pain, peripheral neuropathy, neutropenia, leucopenia, alopecia, mucosal inflammation, asthenia. pyrexia, nausea. vomiting	Gastrointestinal perforation, surgery & wound healing complications, severe & fatal Hemorrhage	Very different toxicity profile. Life threatening toxicities observed with Bevacizumab

19. I say that the Defendant's medicine under the impugned mark BEVATAS was found to selling at drug store failing within the jurisdiction of this Hon'ble Court. The original invoice of sale vide which the medicine under the impugned mark was purchased has already been placed on record at page 84 filed vide list of documents dated 22.12.2017 and has been ' exhibited as **Exhibit-PW 1/11**.

20. I say that the Defendant has unethically and unlawfully adopted the impugned mark BEVATAS. Being in pharmaceutical business, the Defendant is well aware of the Plaintiff adoption and use of the trade mark BEVETEX. It is most respectfully submitted that the Defendant's impugned mark BEVATAS is structurally, visually and phonetically similar to the Plaintiff's trade mark BEVETEX. The competing medicines are sold in the same dosage form i.e. injections and are sold at similar prices. Such adoption also amounts of unfair trade practice, unfair competition and dilution.

Such act also amounts to misrepresentation and misappropriation of Plaintiff's goodwill in the trade mark BEVETEX.

21. I say that the Defendant's impugned trade mark **BEVATAS** is visually, structurally, as well as phonetically similar to the Plaintiffs registered trade mark **BEVETEX** and hence its use is likely to cause confusion and deception."

[Emphasis Supplied]

49. PW-1 was cross-examined by the Appellant and relevant questions with respect to likelihood of confusion, are as under: -

"Q.11. Is it correct that the drug formulation used by the defendant for selling its drug under the trademark 'Bevatas' is completely different from the drug formulation used by the plaintiff for selling its drug under the trademark 'Bevetex'?

Ans. Yes. It is correct.

Q.19. Can you tell the plaintiffs drug under the I mark 'Bevetex' is used for which treatment?

Ans. It is for breast Cancer.

Q.20. Are you aware the treatment for which the defendants drugs Bevatas' is used for?

Ans. It is for lung cancer.

Q.21. What is the mode of administration of the plaintiffs drug under the Mark 'Bevetex'?

Ans. It is prescribed by Doctor and the nurse under the supervision of Doctor's, the same can be administered.

VOL:
It is in the form of injection which is prescribed by the doctor and given by the nurse. Whether in the presence of the Doctor or in his absence.

Q.39. Is it correct that the present suit preferred by the plaintiff company is based upon likelihood of confusion between the plaintiff's mark Bevetex and the defendant trade mark Bevatas?

Ans. Yes.

Q.40. Is it correct that there is no actual confusion between the plaintiff's mark Bevetex and the defendant trade mark Bevatas?

Ans. No, it is not correct.

Q.41. I put it to you that there is no actual confusion between the plaintiff's mark Bevetex and the defendant trade mark Bevatas?

Ans. It is incorrect.

Q.42. Is it correct that the plaintiffs drug Bevetex and the defendant's drug Bevatas are a very different class of drugs with different indications and mode of action?

Ans. Yes.

Q.43. Is it correct that the toxicity profile of plaintiffs drug Bevetex and the defendant's drug Bevatas are different?

Ans. Yes. It is different.

……

Q.53. Please refer to para 21 of the affidavit. Is it correct that the present suit filed by the plaintiff is allegedly based upon likelihood of confusion?

Ans. Yes, it is correct.

Q.54. Is it correct that there are no instances of actual confusion between the drug sold under the plaintiff's mark Bevetex and defendant's mark Bevatas?

Ans. No, it is incorrect.

Q.55. I put it to you that the plaintiff has not filed any instances of actual confusion between the drug sold under the plaintiff's mark Bevetex and defendant's mark Bevatas.

Ans. No, it is incorrect. Vol. the same is a matter of record.

Q.56. Please refer to the court record and point-out the documents filed by the plaintiff showing any instances of actual confusion between the drug sold under the plaintiff's mark Bevetex and defendant's mark Bevatas?

Ans. The same is at page 50 being Ex. PW-1/9 (Colly).

Q.57. Please refer and read the Ex.PW-1/9. Is it correct that the said article does not even pertain to the plaintiff's drug sold under the mark Bevetex or defendant's drug sold under the mark Bevatas?

Ans. Yes, it is correct.
Vol. The said document was filed merely as an example to show confusion between different trade-marks.

Q.58. Is it correct that apart from Ex.PW-1/9 as stated by you in answer to question no.56, there is no document filed by the plaintiff company to show any instances of actual confusion between the drug sold under the plaintiff's mark Bevetex and defendant's mark Bevatas?

Ans. Yes, it is correct.

Q.59 I put it to you that there are no instances of actual confusion between the drug sold under the plaintiff's mark Bevetex and defendant's mark Bevatas?

Ans. No, it is incorrect."

50. In addition to this Court's finding with respect to lack of competence of this witness to establish likelihood of confusion, this Court would also like to observe that the testimony of the sole witness PW-1 is even otherwise unreliable and has to be discarded as a whole. It is an admitted fact that the two drugs are IV infusion drugs and are administered in an oncology clinic by a trained nurse under the supervision of an Oncologist. However, in its testimony while responding to questions pertaining to these undisputed facts

on mode of administration of the drugs, PW-1 at question number 68, 69 and 79 answered as under: -

> "Q.No.23: Please refer to Para-24 of your Affidavit.
>
> Is it correct that 'Bev' is used as an abbreviation for the drugs containing the drug formulation 'Bevacizumab', as being used by other companies and as stated in the said paragraph.
>
> Ans. No
>
> Q.No.24: Please refer to Para-24 at Sr. 3, 5 and 6.
>
> Is it correct that 'Bev' is being used as an abbreviation for the drug composition containing 'Bevacizumab' by the said companies.
>
> Ans. I can't say
> VOL: It's a company decision whether to use the said abbreviation in their product or not.
> ……
>
> Q.67. How long does it take to administer the drug sold under the plaintiff s Mark Bevetex?
>
> Ans. I cannot say.
>
> Q.68. **Are you aware of the process for administration of the drug sold under the plaintiff s mark Bevetex?**
>
> Ans. **I cannot say.**
>
> Q.69. **Are you aware of the process for administration of the drug sold under the defendant's mark Bevatas?**
>
> Ans. **No.**
> …..
>
> Q.75. I put it to you that there are several other companies who are using the prefix Beva for selling their formulation sold under the molecule Bevacizumab?
>
> Ans. It is incorrect.
> I cannot say if the defendant on its packaging mentions the name of the molecule Bevacizumab in a large font along with its trade mark Bevatas. It is incorrect to suggest that the present suit has

not been filed for public interest and has been initiated to protect the commercial interest of the plaintiff company.

…..

Q.79. **is it correct that the drugs in question can only be administered by doctors/oncologists?**

Ans. **No.**

It is incorrect to suggest that the plaintiff mark Bevetex deserve to be rectified for non-use for more than 30 years.

It is incorrect to suggest that the defendant has been selling its drug under the mark Bevatas since the year 2016.

I cannot say if the defendant enjoys enormous goodwill and reputation for its trade mark Bevatas.

It is incorrect that I have filed a false affidavit or I am deposing falsely."

[Emphasis Supplied]

51. A perusal of the aforesaid cross-examination more specifically answers to questions 68, 69 and 79 shows that this witness either had no knowledge or was being deliberately vague, and willfully failed to answer questions pertaining to mode of administration of the two drugs on the patients, so as to avoid proof of character of the two drugs and the role of the Oncologist and the trained nurse in the administration of the two drugs to the patient.

52. Similarly, PW-1's answer to question nos. 23 and 24 is false to its knowledge, as it is ex-facie contrary to paragraph 24 of its affidavit of evidence where the witness deposed about other manufacturers of anti-cancer drugs containing the molecule 'Bevacizumab', which use a trademark with the prefix or suffix 'BEV' or 'BEVA'.

53. The sole document relied upon (Ex. PW-1/9) by PW-1 to substantiate its plea of public interest, was an e-newspaper article. The article was admittedly unrelated to the two drugs and was cited merely as a general illustration of possibility of wrong vending by a negligent chemist. The said

article, in the considered opinion of this Court does not pertain to the two drugs in question and merely narrates an incident of the year 2011 of gross negligence by a pharmacist involving entirely different drugs with dissimilar names as opposed to the present matter. The contents of the said article do not, in any manner, establish likelihood of confusion arising amongst the relevant class of public i.e., chemist between the two rival marks vis-à-vis the two drugs in questions. This article is not evidence of likelihood of confusion on the part of the public.

54. This Court is of the considered opinion that this witness PW-1 was, either incompetent or untruthful, most likely latter, while answering questions in cross-examination and therefore his testimony is highly unreliable and is liable to be discarded. In any event, PW-1 was not competent to depose on the issue of likelihood of confusion as he had no direct knowledge.

55. The Appellant's witness (DW-1) deposed, at paragraph 32, that the drugs are administered under strict medical supervision in specialized oncological settings, pursuant to prescription issued by an Oncologist, and that the possibility of confusion is negligible. This testimony of DW-1 has remained unchallenged.

56. The procedure to be undertaken before administration of the Appellant's drug to the patient has been set out in the affidavit of DW-1 at paragraph 26. The witness DW-1 has asserted[21] that it is impossible for the professionals in question to sell or administer the drug prescribed for one for the other, which are subject matter of this case. This testimony, including the detailed procedure governing prescription, dispensation and administration

[21] Answer to question no. 4 of the cross examination

of the drugs, has remained substantially uncontroverted in cross-examination.

The Respondent's cross-examination of DW-1 at question numbers 1 and 4 proceeded on speculative assumptions of improper dispensing practices of chemist and chemist's sales representative, lack of knowledge of the chemist of the distinction in the molecule 'Bevacizumab' and 'Paclitaxel' rather than on any demonstrable likelihood of confusion arising in the ordinary course of trade due to the rival marks.

57. To sum-up, documentary or oral evidence of the relevant class of the public was to be produced to substantiate the pleaded case of likelihood of confusion. The complete absence of such evidence is fatal to the Respondent's case and leads to the conclusion that Respondent has been unable to prove likelihood of confusion on the part of the public.

58. The Respondent's own admissions regarding the distinct nature, composition and therapeutic application of the two drugs eliminate any plausible likelihood of confusion in real-world conditions.

59. In written submissions, the Respondent sought to expand its case by suggesting that confusion may arise due to illegible prescriptions by the Oncologist or lack of knowledge at the level of paramedical staff, who administers the drug. These submissions travel beyond the pleadings on record and are liable to be rejected on this ground alone.

In any event, such arguments speculatively proceed on a presumption of gross negligence by trained medical professionals, rather than on likelihood of confusion. Trademark law does not proceed to examine the test of likelihood of confusion on assumption of negligent or aberrant or reckless conduct of the relevant public person, but on the standard of actions of a

reasonably prudent person of the relevant class with average intelligence and imperfect recollection. However, in this case the Respondent has conflated imperfect recollection for reckless conduct of the imaginary chemist, as referred to at paragraph no. 21(D) of the plaint.

60. In the facts of this case, the Respondent was required to lead evidence from the relevant class of professionals being Oncologists or chemist, or trained nurse who administer the drugs, to establish that confusion is/was likely in the course of prescribing, dispensing, or administering the drugs. The Respondent is a well-established pharmaceutical company, and it certainly had resources and access to summon an Oncologist or a trained nurse or a pharmacist to depose on the assertion made by it with respect to likelihood of confusion between the two drugs due to the rival marks. The testimony of PW-1, who is the Sales Manager of the Respondent company, cannot qualify as evidence of likelihood of confusion amongst the relevant class of the public, as he is not the relevant public person in question. The Respondent's failure to examine any such relevant witness leads to an inference that no such evidence was led because there was no likelihood of confusion.

61. In the absence of any credible or relevant evidence, and particularly in light of the dissimilarity of goods and the specialised nature of their use, the Respondent has failed to discharge the evidentiary burden cast upon it.

IV. Assessment of Infringement by the learned Single Judge

62. In this case, the issues in the underlying suit were framed by the Trial Court on 17.12.2018, which reads as under:

> "1. Whether the plaintiff is registered owner of the Trademark 'BEVETEX' in relation to medical and pharmaceutical preparations? OPP

2. Whether the plaintiff is the prior and continuous user of the trade mark 'BEVETEX' in comparison to the defendant's use of the mark 'BEVATAS' in relation to medical and pharmaceutical preparations? OPP
3. Whether the use of the impugned mark 'BEVATAS' by the defendant in respect to medical and pharmaceutical preparations amounts to infringement of plaintiffs registered trade mark 'BEVETEX'? OPP
4. Whether there is any similarity or likelihood of confusion/deception between the marks 'BEVETEX' and 'BEVATAS'? OPP
5. Whether the plaintiff is guilty of hoarding its mark 'BEVETEX'? OPD
6. Whether the present suit has been instituted by the plaintiff without any authorization? OPD
7. Whether the present suit suffers from delay, laches and acquiescence? OPD
8. Whether the plaintiff has failed to disclose any cause of action to file the present suit? OPD
9. Whether the defendant is the proprietor of the trade mark 'BEVATAS'? OPD
10. Whether the defendant is the honest adopter and prior user of the mark 'BEVATAS'? OPD
11. Relief."

63. The Appellant and the Respondent are ad-idem that Issue Nos. 3 and 4 are the only relevant issues for deciding the controversy. The parties agreed that the only relevant findings which need to be tested in the present appeal are the findings of the learned Single Judge on Issue Nos. 3 and 4.

64. We also take note that the Respondent has confined its relief for injunction on the plea of public interest on the factual plea of likelihood of confusion on the part of the public. The possibility of likelihood of association of the rival mark with the Respondent's registered trademark is not an issue arising for consideration, in the present suit.

65. The impugned judgment was passed at the post-trial stage in terms of Order XX CPC. Procedurally, while passing a final judgment in a suit, the

Court as per Order XX Rule 5 CPC is required to state its decision on each issue on the basis of pleadings and evidence led by the parties. However, in the present case, the said procedure was not meaningfully adhered to, inasmuch as the impugned judgment does not reflect any evaluation of the evidence on record or considering that there were lack of evidence or the distinct legal thresholds governing infringement. The impugned judgment, however, proceeds primarily on perceived phonetic similarity between the rival marks, without undertaking the holistic and evidence-based assessment of the claims in the underlying suit.

66. The Respondent's case, as crystallised in earlier part of this judgment, before the learned Single Judge, rested solely on a claim of infringement under Section 29(2)(b) of the Act, premised on the alleged similarity of the rival marks and similarity of the goods. The Respondent's pleadings in paragraph 21(D) of the plaint alleges that confusion may arise at the level of a 'chemist' who, either owing to similarity of marks or lack of stock, may dispense an incorrect drug to the consumer, since both are anti-cancer drugs, with potentially fatal consequences for the patient. The Respondent has expressly pleaded that the rival marks 'BEVATAS' and 'BEVETEX' are capable of causing confusion in the mind of the concerned 'chemist'. Thus, the Respondent itself has clearly defined the relevant class of public allegedly susceptible to confusion due to the rival marks as being 'chemists'. Paragraph 21 (D) of the plaint is reproduced again for ease of reference.

> D. UNFAIR COMPETITION
>
> The use of the impugned trade mark BEVATAS by the Defendant is **malafide, and is against public interest**. The impugned mark is capable to creating confusion and deception. It has to be kept in the mind that a **chemist** may give out the wrong drug on account of confusion **or** on account of having no stock of the other brand thinking that both are cancer drugs. Wrong administration of the either drug to a patient can create havoc

> and can prove fatal. The Plaintiff is, therefore, entitled to an order of injunction restraining the Defendant from continuing with their unlawful, unfair and unethical acts of passing off and unfair competition."
>
> [Emphasis Supplied]

67. The pivotal question before the learned Single Judge for deciding the issue of infringement, therefore, was whether the Appellant's use of the mark 'BEVATAS' is likely to cause confusion on the part of the public, specifically the 'chemist' leading to the imaginary chemist dispensing off the wrong drug to the consumer. Curiously, the Respondent has not only pleaded confusion but also pleaded intentional action of the imaginary chemist in vending the non-prescribed drug, in case it does not have stock of the prescribed drug.

68. Unfortunately, *no* specific issue with respect to likelihood of confusion on the part of the public, specifically the imaginary chemist, has been framed in the underlying suit though the substratum of the claim of the Respondent is based on public interest alone. The issue of likelihood of confusion was wrongly framed as between the rival marks, at Issue No. 4, whereas the issue should have been of likelihood of confusion on the part of the public i.e., the imaginary chemist.

The issue of similarity of marks and likelihood of confusion on the part of the public has been determined by the learned Single Judge in the findings returned on joint determination of Issue Nos. 3 and 4.

69. The issue of likelihood of confusion on the part of the public (i.e., the imaginary chemist) was required to be determined by the learned Single Judge upon a careful appraisal of the evidence led by the parties at trial, to return a finding on the case set up by the Respondent's at paragraph 21(D) of the plaint that confusion between the rival marks would arise at the stage of vending of the two drugs by the imaginary 'chemist'. To determine the

issue of likelihood of confusion on the part of the public, the learned Single Judge had to consider the fact of the stark dissimilarity of the two drugs, which in ordinary course is impermissible to prescribe and administer one drug for the other. And also the fact that neither drug can be self-administered by the patient and has to be administered by a trained nurse, under the supervision of an Oncologist. It was after taking into consideration these factors the learned Single Judge had to return a *fact* finding on the issue of deceptive similarity of the marks and its likelihood of confusion on the part of the public due to the use of the impugned mark 'BEVATAS' by the Appellant.

70. However, in the impugned judgment dated 28.03.2026, while deciding Issue Nos. 3 and 4 in favour of the Respondent, learned Single Judge correctly set out the governing legal principles relating to evaluation of deceptive similarity in marks pertaining to pharmaceutical goods, including the need for a stricter approach in matters implicating public health (as noted in paragraphs 19-29, particularly 24-27), the ultimate conclusion at paragraph 28 proceeds directly to return a finding that a likelihood of confusion exists, however, learned Single Judge has not adverted to any evidence oral or documentary led by the parties, more specifically the Respondent, for determining likelihood of confusion on the part of the public through prescription, or by vending, or by administration. Learned Single Judge decided the said Issue Nos. 3 and 4 solely on the basis of the prima facie opinion formed by the Judge on a bare comparison of the rival marks and on the plea that both are anti – cancer drugs, though not therapeutic substitutes. The adjudication on Issue Nos. 3 and 4 is set out at paragraph nos. 19 to 29 of the impugned judgment, which reads as under: -

"19. The Impugned Mark, 'BEVATAS', is structurally and phonetically similar to the Plaintiff's Mark, 'BEVETEX'. An average consumer of average intelligence and imperfect recollection is likely to get confused between the competing Marks. The first and last syllable are almost identical in the competing Marks and, therefore, the Impugned Mark is structurally and phonetically similar to the Plaintiff's Mark, which is likely to cause confusion.

20. The two competing Marks are to be compared as a whole and as per the anti-dissection rule, if the Plaintiff's Mark and the Impugned Mark are compared as a whole, they are deceptively similar and likely to cause confusion in the minds of the consumers with average intelligence and imperfect recollection.

21. Although the Plaintiff has not claimed exclusive right over the use of the suffix 'BEV', it has claimed exclusive right over the Plaintiff's Mark as a whole and as has been held in the judgment of United Biotech v. Orchid Chemicals (supra), the overall impression of the product created in the minds of an ordinary person should be looked at while deciding on the aspect of infringement, and the rival marks should not be dissected into two words.

22. Further, common to register does not prove common to trade. Various marks containing prefix 'BEV' have been applied for / pending before the Trade Marks Registry does not prove that they are in use as has been held in Century Traders v. Roshan Lal Duggar (supra). Further, plea of common use shall fail unless substantial usage by other persons proven as has been held in Pankaj Goel v. Dabur India Ltd. (supra).

23. Trade Mark law seeks to prevent consumer confusion regarding the source or sponsorship of goods and services. In assessing likelihood of confusion between Trade Marks, it is necessary to keep in mind that consumers generally rely on the overall impressions or prominent details of a mark, rather than retaining a photographic memory of the entire Trade Mark. Thus, similarity between two Trade Marks is not assessed in isolation, but in the context of their market use. It is also essential to consider whether the goods or services offered under the competing Marks are identical or similar.

24. A consumer of a drug is likely not aware of the compound or salt behind the drug and is not expected to check the salt or compound of the drug that he is purchasing. The likelihood of confusion also increases with the fact that both the Plaintiff's Drug and the Defendant's Drug are used for the treatment of different kinds of cancer. In order to succeed in a claim of infringement, and to be entitled to an injunction on that basis, the Plaintiff is not required to prove actual confusion, all that has to be proved is likelihood

of confusion. Confusion between drugs treating different ailments is even more dangerous and, therefore, a strict approach shall be applied while comparing the marks as has been held in the decisions of Novartis v. Crest Pharma (supra), Charak Pharma. v. Glenmark (supra) and Sun Pharma v. Glenmark (supra).

25. The judgment of the Supreme Court in Cadila Healthcare v. Cadila Pharmaceuticals (supra) holds that in pharmaceutical cases, a stricter approach has to be applied and the court has to ensure that there is no likelihood of confusion between two drugs and the mere fact that the products may be Schedule-H Drugs, or may be differently priced, does not mitigate the possibility or likelihood of confusion. Public health is of paramount importance and there could be no leniency whatsoever with respect to subject matters concerning public health and any likelihood of confusion between two drugs has to be avoided.

26. Schedule-H drugs differ from Schedule-L drugs in their availability and handling. Schedule-L drugs are accessible exclusively to physicians, whose expertise reduces the likelihood of confusion from their perspective. In contrast, Schedule-H drugs are dispensed by prescription and involve not only doctors, but also pharmacists, who supply these medicines to patients upon receipt of a valid prescription.

27. The probability of confusion significantly increases when prescriptions are managed by pharmacists and patients or individuals purchasing medication on their behalf. Moreover, first-time buyers may lack knowledge regarding drug pricing, rendering price distinctions less relevant. Thus, the risk of confusion in dealing with pharmaceutical products arises not only at the prescribing stage but also during dispensing and purchase. Any potential for confusion at any point, particularly concerning pharmaceutical preparations, is sufficient to justify the issuance of an injunction.

28. In view of the structural and phonetic similarity of the Plaintiff's Mark and the Impugned Mark, the competing Marks being used for similar products, i.e., medicinal and pharmaceutical preparations for human use, more particularly targeting different kinds of cancers, the prior use of the Plaintiff's Mark, and the likelihood of confusion, the use of the Impugned Mark by the Defendant amounts to infringement of the Plaintiff's Mark.

29. Accordingly, Issue Nos. 3 and 4 are decided in favour of the Plaintiff and against the Defendant."

71. The conclusion of the learned Single Judge on the issue of likelihood of confusion on the part of the public at paragraph 28 appears to rest on a

statutory presumption akin to that under Section 29(3) of the Act, rather than a fact finding, which presumption is ex-facie inapplicable in the present case. The impugned judgment does not refer to any oral or documentary evidence led by the Respondent to support such finding of likelihood of confusion on the part of the public. This approach effectively imports the statutory presumption under Section 29(3) of the Act, which is applicable only in cases of identical marks used for identical goods under Section 29(2)(c) of the Act. However, admittedly, the facts of the present case do not fall under Section 29(2)(c) of the Act and therefore the presumption of Section 29(3) of the Act is inapplicable.

72. At the post-trial stage, findings of the Court on likelihood of confusion on the part of the public due to alleged similarity of marks must necessarily be founded on the basis of cogent evidence led by the plaintiff and returned as a finding of fact. A conclusion drawn by the Court based solely on pleadings and visual comparison of marks can, at best, qualify as a prima facie view, but it cannot form the basis of a final fact finding by the Court at the stage of final disposal of the suit for granting a decree of permanent injunction.

If the final view of this Court, in a factual situation, falling under Section 29(2)(b) of the Act also has to be based merely on an opinion formed by the Court on a visual comparison of the marks and the pleadings, then there is no purpose in directing the parties to go to trial in a suit for infringement, for determination of deceptive similarity of the marks.

73. In the absence of any deliberation or analysis of the evidence or lack of evidence produced by the parties to the underlying suit, the conclusion recorded at paragraph 28 of the impugned judgment is, in substance, a prima

facie opinion of the learned Single Judge derived from pleadings and mere visual comparison of marks, rather than a final finding of fact based on evidence led at trial. Such an approach is legally unsustainable at the stage of final adjudication of the underlying suit.

74. It is significant that, at the interim stage, the Trial Court *vide* order dated 17.09.2018 had, on the same pleadings and documents, formed a prima facie opinion and concluded that there was no likelihood of confusion, noting inter alia that:

a. the marks were neither visually nor phonetically similar;
b. the drugs were distinct in composition and nature;
c. both were Schedule H drugs, prescribed by an Oncologist and administered under expert supervision; and
d. the likelihood of confusion was minimal, given the specialised class of purchasers and mode of administration.

75. The Trial Court further observed that any error in administration of the drug to the patient by the trained medical professionals would amount to gross negligence[22] rather than confusion, and that the Appellant's adoption of the mark 'BEVATAS' was prima facie honest, being derived from the molecule 'Bevacizumab'.

76. These findings of the Trial Court were affirmed by the Appellate Court in FAO 447/2018 vide judgment dated 09.01.2020, and the Special Leave Petition (SLP) there against was dismissed by the Supreme Court on 14.02.2020.

77. While it is settled law that prima facie findings of the Court while deciding an application under Order XXXIX Rules 1 and 2 CPC do not bind

[22] At paragraph 14 of the order dated 17.09.2018.

the Court at the time of final adjudication, however, a departure from the prima facie view would ordinarily require clear and cogent reasons and, more importantly, credible evidence emerging at trial which would persuade the trial Court to take a contra view at the stage of final adjudication. Notably, after the dismissal of interim injunction application and its affirmation in appeal, the Respondent did not produce any new documentary or oral evidence of a public person to substantiate its plea of likelihood of confusion.

78. By way of oral evidence, Respondent led evidence of its sales representative as PW-1, who parroted the plaint and as discussed hereinafter the said witness failed to prove any probability or likelihood of confusion amongst the members of the public including the imaginary chemist. This is also probably the reason that the learned Single Judge did not refer to the oral evidence of PW-1 in the judgment while deciding Issue Nos. 3 and 4.

79. In this case, no cogent evidence oral or documentary was led at trial by the Respondent, which could have persuaded the learned Single Judge to form an opinion about likelihood of confusion on part of the public and deceptive similarity of marks contra to the view already taken by the Trial Court and the High Court, while deciding the interim application. No new documents were brought on record before the learned Single Judge nor any oral evidence of the members of the relevant public was led to show likelihood of confusion.

80. The findings of likelihood of confusion [on the part of the public] and similarity of marks recorded in the impugned judgment at paragraph 28 is based on a visual comparison undertaken by the Court itself, akin to one formed by a Court at a pre-trial stage; however, the findings in the impugned

judgment has been rendered at a post-trial stage, where a conclusive determination was required on the basis of pleadings, evidence, and settled legal tests. Therefore, the impugned findings on likelihood of confusion and infringement, cannot be sustained in law.

V. Governing principles for the test of infringement

81. The landmark judgment of the Supreme Court in **Cadila-2001** (supra), recognizes and lays down the principles which a trial Court must follow in an action of passing off, while deciding the question of deceptive similarity of the marks. The principles laid down in this judgment are followed for goods which fall in the Nice Classification of medicinal and pharmaceutical preparation in Class 5, keeping in view the likelihood of confusion amongst the public and public interest.

The Supreme Court in the said judgment[23], recognised the issue of public interest in case of goods which are pharmaceutical drugs, as a significant factor. It directed that factors enlisted at paragraph 35 of the said judgment, are to be considered by a trial Court for determining deceptive similarity between marks. The Supreme Court also clarified that while determining deceptive similarity weightage has to be given to 'each' of the factors for determining the issue of deceptive similarity. Paragraph 35 and 36 read as under: -

> "35. Broadly stated, in an action for **passing off** on the basis of **unregistered trade mark** generally for deciding the question of **deceptive similarity** the following factors are to be considered:
>
> (a) The nature of marks i.e. whether the marks are word marks or label marks or composite marks i.e. both words and label works.
> (b) the degree of resemblance between the marks, phonetically similar and hence similar in idea.

[23] Paragraph Nos. 32 and 33.

(c) The nature of the goods in respect of which they are used as trademarks.
(d) The similarity in the nature, character and performance of the goods of the rival traders.
(e) The class of purchasers who are likely to buy the goods bearing the marks they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and/or using the goods.
(f) The model of purchasing the goods or placing orders for the goods.
(g) Any other surrounding circumstances which may be relevant in the extent of dissimilarity between the competing marks."

36. Weightage to be given to each of the aforesaid factors depending upon facts of each case and the same weightage cannot be given to each factor in every case.

[Emphasis Supplied]

82. It needs to be emphasised that in the judgment of **Cadila-2001** (supra), the Supreme Court principally considered the issue of deceptive similarity in the context of an action for passing off founded upon use of an unregistered mark, and not in a claim for infringement of a registered trademark founded upon a statutory right.

83. A Coordinate Bench of this Court in **Gufic Ltd. v. Clinique Laboratories** (supra) after examining the law on the subject, culled out following legal principles for evaluating deceptive similarity of the marks in a suit for infringement, and importantly held that, where the marks are not identical, the test for evaluating deceptive similarity of marks in a suit for infringement is the same as in passing off action. The relevant paragraph 22 reads as under: -

"22. The following principles can be culled out from the aforesaid decisions: -

1. **The test of deceptive similarity in the case of infringement is the same as in a passing off action, where the marks are not identical**;
2. The question has to be approached from the point of view of a man with average intelligence and imperfect recollection;

3. In comparing the marks, it is the overall structural and phonetic similarity of the two marks that is to be seen and not by splitting them into their component parts and to consider the etymological meaning thereof;
4. The trademark is the whole thing - the whole word has to be considered; and
5. In comparing the two marks, it is also to be seen whether they both convey the same idea - (test of commonness of the idea between the two marks)."

[Emphasis Supplied]

84. In the aforesaid judgment, the Division Bench also referred to the landmark judgment of the Supreme Court in **Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories**[24] which lays down the principles to be borne in mind while deciding the similarity of marks in case of infringement. The relevant paragraphs 28, 29 and 31 reads as under:-

"28. The other ground of objection that the findings are inconsistent really proceeds on an error in appreciating the basic differences between the causes of action and right to relief in suits for passing off and for infringement of a registered trade mark and in equating the essentials of a passing off action with those in respect of an action complaining of an infringement of a registered trade mark. We have already pointed out that the suit by the respondent complained both of an invasion of a statutory right under Section 21 in respect of a registered trade mark and also of a passing off by the use of the same mark. The finding in favour of the appellant to which the learned counsel drew our attention was based upon dissimilarity of the packing in which the goods of the two parties were vended, the difference in the physical appearance of the two packets by reason of the variation in the colour and other features and their general get-up together with the circumstance that the name and address of the manufactory of the appellant was prominently displayed on his packets and these features were all set out for negativing the respondent's claim that the appellant had passed off his goods as those of the respondent. These matters which are of the essence of the cause of action for relief on the ground of passing off play but a limited role in an action for infringement of a registered trade mark by the registered proprietor who has a statutory right to that mark and who has a statutory remedy for the event of the use by another of that mark or a colourable imitation thereof. While an action for passing off is a Common Law remedy being in substance an action for

[24] 1964 SCC OnLine SC 14

deceit, that is, a passing off by a person of his own goods as those of another, that is not the gist of an action for infringement. The action for infringement is a statutory remedy conferred on the registered proprietor of a registered trade mark for the vindication of the exclusive right to the use of the trade mark in relation to those goods" (Vide Section 21 of the Act). The use by the defendant of the trade mark of the plaintiff is not essential in an action for passing off, but is the sine qua non in the case of an action for infringement. No doubt, where the evidence in respect of passing off consists merely of the colourable use of a registered trade mark, the essential features of both the actions might coincide in the sense that what would be a colourable imitation of a trade mark in a passing off action would also be such in an action for infringement of the same trade mark. But there the correspondence between the two ceases. In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark would be immaterial; whereas in the case of passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff.

29. When once the use by the defendant of the mark which is claimed to infringe the plaintiff's, mark is shown to be "in the course of trade", the question whether there has been an infringement is to be decided by comparison of the two marks. Where the two marks are identical no further questions arise; for then the infringement is made out. When the two marks are not identical, the plaintiff would have to establish that the mark used by the defendant so nearly resembles the plaintiff's registered trade mark as is likely to deceive or cause confusion and in relation to goods in respect of which it is registered (Vide Section 21). A point has sometimes been raised as to whether the words "or cause confusion" introduce any element which is not already covered by the words "likely to deceive" and it has sometimes been answered by saying that it is merely an extension of the earlier test and does not add very materially to the concept indicated by the earlier words "likely to deceive". But this apart, as the question arises in an action for infringement the onus would be on the plaintiff to establish that the trade mark used by the defendant in the course of trade in the goods in respect of which his mark is registered, is deceptively similar. This has necessarily to be ascertained by a comparison of the two marks — the degree of resemblance which is necessary to exist to cause deception not being

capable of definition by laying down objective standards. The persons who would be deceived are, of course, the purchasers of the goods and it is the likelihood of their being deceived that is the subject of consideration. The resemblance may be phonetic, visual or in the basic idea represented by the plaintiff's mark. The purpose of the comparison is for determining whether the essential features of the plaintiff's trade mark are to be found in that used by the defendant. The identification of the essential features of the mark is in essence a question of fact and depends on the judgment of the Court based on the evidence led before it as regards the usage of the trade. It should, however, be borne in mind that the object of the enquiry in ultimate analysis is whether the mark used by the defendant as a whole is deceptively similar to that of the registered mark of the plaintiff.

…..

31. It appears to us that the conclusion reached by the Courts below that the appellant's mark is deceptively similar to that of the respondents cannot be stated to be erroneous. Besides, this question of deceptive similarity is a question of fact, unless the test employed for determining it suffers from error. In the present case, it was not suggested that the Courts below had committed any error in laying down the principles on which the comparison has to be made and deceptive similarity ascertained. (See per Lord Watson in Attorney-General for the Dominion of Canada v. Attorney-General for Ontario etc. [1897 AC 199] As there are concurrent findings of fact on this matter, we do not propose to enter into a discussion of this question de novo, since we are satisfied that the conclusion reached is not unreasonable."

[Emphasis supplied]

The Supreme Court at paragraph 31 noted that the issue of deceptive similarity of the rival marks is essentially a question of *fact*, which has to be decided by the Court on the basis of the applicable principles governing comparison of marks and the evidence placed on record.

85. A conjoint reading of the judgments in **Cadila-2001** (supra), **Gufic Ltd.** (supra) and **Kaviraj Pandit Durga Dutt Sharma** (supra) make it evident that, in cases where the rival marks are similar though not identical, the enquiry in an infringement action necessarily proceeds akin to that of passing off action. The factors enumerated by the Supreme Court in paragraph 35 of **Cadila-2001** (supra) were identified as relevant

considerations to guide the factual determination of deceptive similarity and likelihood of confusion amongst the purchasing public, particularly in relation to medicinal and pharmaceutical products where considerations of public interest assume heightened significance. Therefore, though **Cadila-2001** (supra) arose in the context of a passing off action, the principles laid down therein would equally govern an infringement action involving similar, though not identical, rival marks, since the test for determining deceptive similarity in such cases has been held to be substantially the same.

It is in the aforesaid legal backdrop that this Court shall now proceed to examine the Respondent's claim of infringement under Section 29(2)(b) of the Act and likelihood of confusion on the part of public.

VI. Test of infringement in the present case under Section 29(2)(b) of the Act

86. The adjudication of a claim for infringement involving similar, as opposed to identical, rival marks under Sections 29(1) and 29(2)(b) of the Act proceeds in two distinct but interrelated stages. In the first stage, the Court undertakes, on its own, a comparison of the rival marks as a whole to determine the degree of their visual, structural and phonetic resemblance. This exercise is undertaken on a bare comparison of the marks and does not require appreciation of oral or documentary evidence. The object of this enquiry is to ascertain whether the rival marks are ex facie wholly dissimilar or amount to an imitation of one another or have certain degree of similarity. If, at this threshold stage, the Court concludes that the rival marks are wholly dissimilar, the question of infringement ordinarily does not survive for further consideration, and the Court may not be required to proceed to the subsequent stage of enquiry concerning deceptive similarity and likelihood of confusion, and the plaint shall be dismissed under Order XII

Rule 6 CPC, as no cause of action arises in favour of the plaintiff.

87. If, however, upon such comparison, the Court reaches the conclusion that the defendant's mark is an imitation [nearly identical] of the plaintiff's registered mark, that is to say, the essential features of the registered mark have been substantially adopted by the defendant, and the rival goods are also identical, no further evidence of the manner of use of the impugned mark 'BEVATAS' is necessary for sustaining the claim for infringement. In such a case, the statutory right of the registered proprietor is held by the Court to be violated by reason of the deceptive imitation itself. [Re**: Kaviraj Pandit Durga Dutt Sharma** (supra), **K. R. Chinna Krishna Chettiar v. Shri Ambal and Co., Madra and Another**[25] **and Modi-Mundipharma Pvt. Limited v. Specialty Meditech Pvt, Ltd & Anr.**[26]].

88. However, where the Court, after comparing the rival marks, forms an opinion that though the marks bear certain degree of similarity, which is not an imitation or nearly identical, then the enquiry necessarily proceeds to the second stage, namely, the determination of deceptive similarity of the mark and likelihood of confusion on the basis of the pleadings and evidence led by the parties. For this determination, the Court is required to also examine whether the defendant's use of the impugned mark 'BEVATAS' in relation to the concerned goods is likely to deceive or cause confusion amongst the public. The determination at this stage is essentially evidentiary and factual in nature and cannot rest solely upon a bare comparison of the rival marks by the Court, in abstract. Such appreciation of evidence becomes necessary irrespective of whether the rival goods are identical or similar, once the case falls within category of marks being considered as similar.

[25] (1969) 2 SCC 131
[26] 2025:DHC:5039-DB

89. Keeping in view the principles set out hereinabove, this Court shall first examine the nature and degree of similarity between the two drugs, since similarity or identity of the goods constitutes a sine qua non for the applicability of Section 29(2)(b) of the Act. It is only upon a finding that the two drugs are identical or similar, that the Court would proceed to assess the visual, structural and phonetic similarity between the rival marks, so as to adjudicate upon the Respondent's claim of infringement under the aforesaid provision.

A. Degree of similarity between the two drugs

90. Whether the goods are identical or similar is a foundational fact which ought to have been pleaded by the Respondent clearly in the plaint. However, the plaint is vague and despite acknowledging at paragraph 18 that the two drugs are distinct and cannot be prescribed for each other, the plaint fails to take a stand on the issue of the two drugs being identical or similar. The Respondent during arguments before the learned Single Judge urged the Court to apply the statutory presumption of Section 29(3) of the Act which is available only in the case of identical goods, however this submission was contrary to pleadings at paragraph 18 of the plaint where the Respondent/plaintiff had itself pleaded that drug prescribed to one patient cannot be prescribed for the other patient as they are not therapeutic substitutes. The Respondent was conscious of the fact that these are not identical drugs. The Respondent, however, took an incorrect stand, contrary to the facts, before the learned Single Judge by placing reliance on Section 29(3) of the Act. The Appellant in its written statement and affidavit of evidence had emphatically pleaded that the two drugs are, in fact, dissimilar

in view of their distinct therapeutic uses, formulations and mode of administration etc., a fact which has not been disputed by the Respondent.

91. It is not in dispute that both the Appellant's product 'BEVATAS' and the Respondent's product 'BEVETEX' are anti-cancer drugs. However, this is the only commonality between the two drugs and otherwise the two drugs are wholly dissimilar and nothing further. The distinction between the two drugs has been comprehensively captured in the impugned judgment dated 28.03.2026 at paragraph 9.9, and is not disputed, which reads as under:

BRAND NAME: BEVATAS	**BRAND NAME: BEVETEX**
Defendant's drug	**Plaintiff's drug**
Type of Drug: rDNA Drug	**Type of Drug:** Synthetic Chemical Drug
Dosage form: 100mg and 400mg for injection	**Dosage form:** 100mg and 300mg for injection
Route of Administration: Intra venous injection and need to be administered by trained oncology nurses at a multi-specialty hospital under supervision of medical or surgical oncologists. Unlike other injectable medicines it cannot be administered at any common hospital or clinic. Bevatas cannot be sold without prescription of an oncologist.	**Route of Administration:** Intra venous injection and need to administered by trained oncology nurses at a multi-specialty hospital under supervision of medical or surgical oncologists. Unlike other injectable medicines it cannot be administered at any common hospital or clinic.
Therapy: For the treatment purpose	**Therapy:** For the treatment purpose
IMS category: Monoclonal antibody (Anti Vascular endothelial growth factor)	**IMS category:** Cytotoxic agent or microtubule inhibitor
Product appearance: Vial for injection in a single pack	**Product appearance:** Vial for injection in a single pack
Indication: First-line treatment of non-squamous NSCLC in combination with platinum-based chemotherapy. Metastatic carcinoma of the colon or rectum ('mCRC').	**Indication:** After failure of combination chemotherapy for Metastatic breast cancer ('mBC') or relapse within 6 months of adjuvant chemotherapy.

Advanced and/or metastatic renal cell cancer ('mRCC'). Epithelial ovarian, fallopian tube and primary peritoneal cancer. Cervical Cancer. Glioblastoma. Metastatic breast cancer ('mBC').	
Type of medicine: Hospital based medicine, need to supply against prescription of registered medical practitioner or oncologist only. Need to be administered as an intra venous injection by trained oncology nurses under the supervision of registered medical practitioner (90 minutes infusion)	**Type of medicine:** Hospital based medicine, need to supply against prescription of registered medical practitioner or oncologist only. Need to be administered as an intravenous injection by trained oncology nurses under the supervision of registered medical practitioner (30 minutes infusion)
MRP: Bevatas: Rs. 39995/- for 400mg and Rs. 25990/- for 100mg	**MRP:** Bevetex: Rs. 37000/- for 300mg and Rs. 12500/- for 100mg
Dose: The recommended dose of bevacizumab is 7.5 mg/kg or 15 mg/kg of body weight given once every 3 weeks as an IV infusion in non-small cell lung cancer. Advanced and/or metastatic renal cell cancer (mRCC): The recommended dose of bevacizumab is 10 mg/kg of body weight given once every 2 weeks as an IV infusion. Epithelial ovarian, fallopian tube and primary peritoneal cancer: The recommended dose of bevacizumab is 15mg/kg of body weight given once every 3 weeks as an IV infusion.	**Dose:** 260 mg/m2 and Bevetex 295 mg/m2 every 3 weeks as IV infusion over 30 minutes.

92. The aforesaid table of dissimilarities of drugs was furnished by the Appellant and it shows: -

i. The Appellant's drug is a biological (rDNA-based) preparation containing the molecule 'Bevacizumab', a monoclonal antibody, whereas the Respondent's drug is a synthetic chemical formulation containing the molecule 'Paclitaxel'; the rival parties admit that these are not therapeutic substitute for each other. There is no overlap between the two drugs as one

cannot, admittedly, be prescribed for the other.

ii. The Appellant's drug is prescribed as first line of treatment to patients suffering from Metastatic carcinoma of the colon or rectum ('mCRC'), advanced and/or metastatic renal cell cancer ('mRCC'), epithelial ovarian, fallopian tube and primary peritoneal cancer, cervical cancer, glioblastoma and mBC.

iii. Whereas Respondent's drug is prescribed as second line of treatment after failure of combination chemotherapy for patient suffering from mBC or relapse within 6 months of adjuvant chemotherapy.

iv. As is evident, the clinical indications of the patient to whom Appellant's drugs have to be prescribed is distinct from the patient for whom the Respondent's drug has been prescribed.

v. The decision to prescribe either of the anti-cancer drug is taken by a specialized doctor i.e., an Oncologist.

vi. The dosage regimens, infusion duration, and treatment protocols are substantially different;

vii. Although both are administered intravenously in hospital settings under strict supervision by an Oncologist, such similarity is generic to oncology drugs and does not indicate substitutability or similarity in use.

93. These dissimilarities are not contested. The Respondent itself has placed a comparative table on record (as noted at paragraph 8.7 of the impugned judgment as well as at paragraph 18 of the plaint), which admits to the same factual position that the two drugs are dissimilar.

94. It is an admitted position that while both drugs may broadly fall within the category of anti-cancer pharmaceutical preparations, the material on record unequivocally establishes that they are fundamentally distinct in their respective composition[27], indication of the patient to whom it is prescribed and administered, stage[28] of its administration to the patient, manner of administration[29] and recommended dose administered to the patient. The Respondent also concedes to these distinction and dissimilarities.

The distinction of the stage of treatment, lack of interchangeability of the two drugs, mode of administration, indications, recommended dosage etc., are all factors which exist simultaneously and are to be taken into consideration while assessing the similarity if any, of the two drugs.

95. Respondent admits that the two drugs are prescribed by an Oncologist for different indications (type of cancers). The Appellant's drugs are prescribed to patients suffering from indication of either of the five types of cancers. The Respondent's drug is prescribed to patients suffering from indication of one type of cancer. The cancer of the mBC is the only overlapping indication. Even this overlap of mBC is not relevant because the Appellant's drug is given by an Oncologist as a first line of treatment to the patient suffering from mBC whereas Respondent's drug is given by the Oncologist at a stage, when the patient suffering from mBC has failed to respond to chemotherapy. Thus, the stage of the condition of the patient suffering from mBC when these two drugs may be prescribed by the Oncologist are also separate and distinct.

[27] Molecule of the drug
[28] First line of treatment and second line of treatment respectively
[29] The pre-preparation which the nurse has to undertake before administering the drug to the patient and the duration of the administration.

96. The **Cadila-2001** (supra) judgment, while enlisting the factors to be taken into consideration in an action for passing off, at paragraph 35(c) and 35(d) states that similarity of goods has to be assessed by its nature, character and performance. In the considered opinion of this Court, the drugs which are not interchangeable or do not serve the same therapeutic purpose and are not perceived by the relevant class of public (i.e., Oncologist, chemist and the patient or attendant) as alternatives, is for all intents and purposes dissimilar. Another way to put it is that the two drugs are not even closely similar.

97. The stark differences in the two drugs negates the plea of similarity of goods raised by the Respondent on account that both drugs are anti-cancer drugs or fall under the Nice Classification of medicinal and pharmaceutical preparations in Class 5 as per the Act. Thus, as a matter of fact, the goods covered under the Respondent's mark 'BEVETEX' and those under the Appellant's mark 'BEVATAS' are absolutely dissimilar.

98. In view of the aforesaid observations, the Respondent's claim of infringement could have been rejected on this ground alone. However, considering the Nice Classification of the two drugs being similar, we shall now examine if the rival marks so nearly resemble to each other so as to cause likelihood of confusion on the part of the public, despite the dissimilarity between the two drugs.

B. Degree of similarity between the two rival wordmarks

99. The Appellant has contended that its adoption of the mark 'BEVATAS' is bona fide, being derived from the molecule 'Bevacizumab' and its corporate name 'INTAS' i.e., 'BEVA+TAS'.

100. The learned Single Judge has, at paragraph 16 of the impugned

judgment, accepted the submission of honesty of adoption of the mark 'BEVATAS', a position also conceded by the Respondent herein.

101. The Appellant's witness DW-1 in his evidence affidavit dated 01.02.2019 at paragraph '20' has enlisted names of six manufacturers of the anti-cancer drugs containing 'Bevacizumab' as the molecule, to contend that use of the letters 'BEV' and/or 'BEVA' is common amongst the manufacturers, who are producing anti-cancer drugs containing this same molecule, and therefore, the letters 'BEV' and 'BEVA' are publici juris for anti-cancer drugs containing this molecule. [Re: **Schering Corporation** (supra)[30] and Re: **Astrazeneca UK Limited** (supra)[31]]

The Respondent's witness PW-1 as well in its subsequently filed affidavit of evidence dated 08.02.2019 at paragraph '24' unequivocally acknowledges the aforesaid position of use of the letters 'BEV' and 'BEVA' by other manufacturers of anti-cancer drugs containing 'Bevacizumab' in their trademarks.

102. The Respondent on 06.04.2026 during arguments in the present appeal has handed over a list of twenty (20) pharmaceutical company which manufacture anti-cancer drug containing 'Bevacizumab' as the molecule, and it can be seen that in addition to the six (6) names identified by the Respondent's witness in its affidavit of evidence at paragraph '24', there are two more manufacturers, who sell this anti–cancer drug under the marks 'BEVACIZAB' and 'BEVARO'. Thus, even as per the Respondent, there are at least six other pharmaceutical companies which are selling the anti-cancer drug containing 'Bevacizumab' as the molecule, who use the syllables BEV or BEVA as a suffix or prefix in their trademark for the said

[30] At paragraph no. 108.
[31] At paragraph no. 20.

anti-cancer drug and one of the companies uses part name of the molecule i.e., CIZUMAB itself as its marks. The list of the seven other trademarks is as under: -

Sr. No.	Trade Mark	Company
1.	ZYBEV	Zydus
2.	BEVACIREL	Reliance Lifesciences
3.	**CIZUMAB**	Hetero Drugs
4.	BEVAZZA	Lupin
5.	BEVAREST	Emcure
6.	**BEVACIZAB**	Abbott
7.	**BEVARO**	Cadila Pharma

103. The Respondent concedes that it has no objection to the use of the aforesaid trademarks by the other pharmaceutical companies as it does not claim any exclusive rights on the prefix 'BEV' or 'BEVA'.

The Respondent had also, during arguments, proposed that if Appellant changes its mark to 'BEVAINTAS' [i.e., a combination of 'BEVA'+INTAS] it would be satisfied, as the same would not be deceptively similar to its mark 'BEVETEX'.

104. The aforesaid undisputed facts, however, substantiates the submission of the Appellant that the letters 'BEV' and 'BEVA' are publici juris in respect of the anti-cancer drugs containing the molecule 'Bevacizumab'.

105. Coming to the phonetic similarity of the two rival marks, when considered as a whole, as mandated by the anti-dissection rule, the rival marks differ materially in their syllabic structure, vowel sounds, and terminal phonetics. Since both are coined words, they do not have any prescribed pronunciation in the English dictionary. The Appellant's drug BEVATAS is made from the molecule of 'Bevacizumab'. The word

'Bevacizumab' is an INN[32]. The said word is pronounced[33] as **beh·vuh·SIH·zoo·mab**[34]. It is a matter of record that there are 20 pharmaceutical companies manufacturing anti-cancer drugs containing the said molecule and therefore, Oncologists and chemists are both likely to be well-acquainted with the name of the molecule 'Bevacizumab'. Similarly, the Appellant is a well-known pharmaceutical company and its corporate name INTAS is also well-known amongst the people of the trade; this company also uses its corporate name INTAS or TAS in the names of other drugs[35] manufactured by them. Thus, the relevant section of the public i.e., the Oncologists and the chemists are familiar with the words INTAS and TAS for the drugs manufactured by the Appellant.

The rival marks 'BEVATAS' and 'BEVETEX' are wordmarks.

As noted above, it is undisputed that the use of the letters BEV and BEVA are publici juris in pharmaceutical industry due to the molecule bearing INN 'Bevacizumab'. Therefore, the terminal syllables i.e., the suffix of BEVATAS and BEVETEX have to be assessed more closely for phonetic similarity. Also, the fourth syllable in both the marks is a vowel[36] which is pronounced differently in both the marks, creating different voice modulation. The user who is familiar with the molecule bearing INN 'Bevacizumab' and also the Appellant's corporate name INTAS, in our

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[32] International non-proprietary name

[33] The pronunciation as published on the website of National Cancer Institute, USA [https://www.cancer.gov/about-cancer/treatment/drugs/bevacizumab]

[34] The syllable BEVA is pronounced as **beh-vuh**, highlighted in red colour which will become relevant for determining pronunciation of the Appellant's mark

[35] Appellant's witness DW-1, in its affidavit of evidence at paragraph 31, has listed 40 registered trademarks using the word 'TAS', few of them being LOMITAS, SPARTAS, CLARITAS, RUMENTAS, AMTAS, TINITAS, FLUTAS, FERITAS etc.

[36] "A speech sound produced by vibration of the vocal cords but without any closure or narrowing of the speech tract such as would cause audible friction, capable of forming a syllable." Oxford English Dictionary, Sixth Edition, Volume-I.

considered opinion, is likely to pronounce Appellant's mark 'BEVATAS' as **beh-vuh-tas**.

Whereas Respondent's mark 'BEVETEX' is likely to be pronounced as **beh-veh-tex**.

The distinct sound of the vowel 'A' in BEVATAS and vowel 'E' in BEVETEX, is evidenced in the above pronunciation in the highlighted letter (in red).

106. The distinction between the 'BEVA' and 'BEVE' sounds in the fourth letter, which is a vowel, is significant; it alters the cadence and pronunciation of the mark. More importantly, the terminal syllables i.e., suffix, 'TAS' and 'TEX' are phonetically distinct, giving a different aural[37] effect, producing entirely different auditory impressions. In our considered opinion, the phonetic sounds of the vowel, along with the suffix of both the marks are distinct. In view of the substantial distinction in pronunciation of the rival marks, we are of the considered opinion that the Appellant's mark when spoken is unlikely to be mistaken for the Respondent's mark and vice-versa.

107. We note that the finding of learned Single Judge on structure and phonetic similarity is *only* at paragraph 19 of the impugned judgment where the 'sole' reason given by the learned Single Judge for its finding is that the first and last syllable of the rival marks is almost identical, that is to say for Appellant's mark it is the syllables BEV and TAS and for the Respondent's mark it is the syllables BEV and TEX respectively. Learned Single Judge, while examining the phonetic similarity of the marks, has neither taken into consideration the fact that BEV is publici juris and also not taken into

[37] "of, pertaining to, or received by the ear", Oxford English Dictionary, Sixth Edition, Volume-I.

consideration the effect of the presence of the vowel sounds 'A' in Appellant's mark and 'E' in the Respondent's mark, along with the distinctive suffixes 'TAS' and 'TEX' in the uncommon part in the two rival marks.

108. While assessing visual similarity of the rival marks, in our considered opinion, keeping in view the fact that BEV and BEVA are publici juris syllables in the pharmaceutical industry specifically for anti-cancer drug, due emphasis has to be given by the Court to the uncommon letters in the rival marks [Re: **Astrazeneca UK Limited** (supra)[38]]. In pharmaceutical industry, it is a common practice, that the relevant persons of the public are attuned to ignore publici juris syllables of the marks and pay due attention to the uncommon syllables in the marks for distinguishing between two pharmaceutical goods. Taking into consideration the uncommon letters/syllables of the rival marks on a visual comparison, we do not find BEVETEX (Bevetex) and BEVATAS (Bevatas) to be visually and structurally similar. The distinct suffixes (ETEX and ATAS) in each of the mark sufficiently distinguishes the rival marks visually.

109. Based on the aforesaid discussion, the rival marks are not similar either phonetically, structurally or visually. Applying the aforesaid precedents, this Court is unable to agree that the marks 'BEVATAS' and 'BEVETEX' are phonetically and/or visually similar.

110. In view of the findings returned hereinabove, this Court conclusively holds that the two drugs are dissimilar in their composition, therapeutic purpose, indications, etc., and further that the rival marks 'BEVATAS' and 'BEVETEX', when compared as a whole, are neither visually, structurally

[38] At paragraph no. 21.

nor phonetically similar so as to constitute an infringement.

111. In view of the aforesaid discussion, the findings returned by the learned Single Judge on Issue Nos. 3, 4, 9 and 10 are set aside. We hold that, the Appellant's use of the mark 'BEVATAS' is not infringing the proprietary rights of the Respondent in its registered trademark 'BEVETEX'. The Appellant's adoption of the mark 'BEVATAS' is honest and has no bearing on the Respondent's adoption of the mark 'BEVETEX'.

Also, the findings returned by the learned Single Judge on Issue No. 7 hold no relevance and cannot survive independently, inasmuch as the issue of delay, laches or acquiescence would arise only where the infringement occurs. Since this Court has held that the Appellant's use of the mark 'BEVATAS' does not infringe the Respondent's proprietary rights in its trademark 'BEVETEX', the question of examining delay, laches or acquiescence does not arise.

VII. Other Surrounding circumstances to assess the Respondent's contention of even the slightest possibility of likelihood of confusion

112. In the facts of the present case, this Court has already held that the rival marks do not bear visual, structural or phonetic similarity and that the two drugs are dissimilar. However, the Respondent's case throughout has been founded on the alleged likelihood of confusion at the stage of dispensing or administration of the drugs, particularly by chemists or paramedical staff. **Cadila-2001** (supra) has mandated a stricter approach in cases involving pharmaceutical goods, where even a possibility of confusion impacting public health warrants stricter scrutiny. The ratio and obiter of this judgment was heavily relied upon by the rival parties, as well as by the learned Single Judge while adjudicating the Issue Nos. 3 and 4 for infringement.

113. The Respondent's case, both in the pleadings and evidence, rests substantially upon the apprehension that a chemist or paramedical staff may inadvertently dispense or administer the wrong drug. The sustainability of the Respondent's claims must therefore be examined in the light of the evidence actually led on record and the surrounding circumstances governing the prescription, dispensation and administration of the two drugs.

The Respondent has also alleged that the chemist may deliberately sell the incorrect drug, in case it runs out of stock for the prescribed drug; in our considered opinion such a plea does not satisfy a legal threshold of likelihood of confusion as it is based on the prospects of gross negligence.

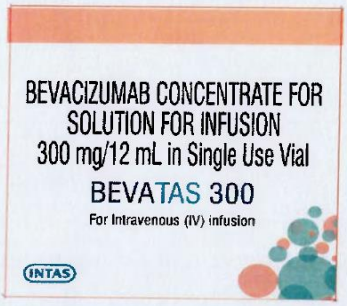
114. In this context, paragraph 31 of **Kaviraj Pandit Durga Dutt Sharma** (supra) assumes significance. The Supreme Court held that deceptive similarity is essentially a question of fact and interference by an appellate Court is warranted where 'the test employed for determining it suffers from error'. In the present case, the learned Single Judge, while recording findings on likelihood of confusion and infringement, proceeded solely on visual and phonetic comparison of the marks and a presumed possibility of confusion, without undertaking an evidence-based factual determination of whether the relevant class of persons identified by the Respondent itself, namely chemists or paramedical staff, were in fact likely to be confused in the particular circumstances governing prescription and administration of the rival oncology drugs.

115. This Court has concluded that the learned Single Judge had erred in applying the correct legal and evidentiary test while arriving at the finding of likelihood of confusion, and therefore, it is incumbent upon this Court to independently examine the surrounding circumstances, in order to determine

whether the Respondent has, in fact, been able to establish the legal threshold of likelihood of confusion contemplated in Section 29 (2) of the Act. Therefore, this Court deems it appropriate to examine the surrounding circumstances of this case in terms of the factors identified in paragraph 35 of **Cadila-2001** (supra), to determine whether any slightest likelihood of confusion exists amongst the relevant class of persons, to sustain the Respondent's claims of deceptive similarity leading to likelihood of confusion on the part of the public.

A. Distinct visual impressions of the packaging of the rival marks

116. The rival marks are wordmarks and are used by parties as a part of their labels on the packaging of the two drugs. The Appellant has in the appeal set out a comparison chart of the rival marks as used by the parties in the labels of the two drugs, on their respective packaging of 300mg, as under: -

APPELLANT'S MARK	RESPONDENT'S MARK
BEVATAS	**BEVETEX**
Phonetics of the mark starts with phonics *BEVA*	Phonetics of the mark starts with phonics *BEVE*
Phonetics of the mark ends with phonics *TAS*	Phonetics of the mark ends with phonics *TEX*
No visual similarity as the labels are completely different. BEVATAS 400	No visual similarity as the labels are completely different. BEVETEX
The trademark is qualified by the name of its chemical compound being **"BEVACIZUMAB"**, a biologic drug	The trademark is qualified by the name of its chemical compound being **"PACLITAXEL"**, a chemical drug
	

117. This drug is a Schedule H drug and is sold on a prescription given by an Oncologist. The prescription ordinarily enlists the indications from which the patient suffers leading to the prescription of the concerned drug. The vending of the drug by the chemist, therefore, happens as per law upon receiving a prescription which would contain the aforesaid details.

118. This Court has reproduced the rival marks as the same appear on the packaging, to test whether an average man (i.e., the chemist, as per paragraph 18 and 21D of the plaint) or a trained nurse with his/her imperfect recollection would on a visual impression of Respondent's mark 'BEVETEX', would be led to believe that the Appellant's mark 'BEVATAS' on a prescription is a reference to Respondent's mark

'BEVETEX'. As noted above, a prescription ordinarily prescribes the indication of the patient to whom the drug is prescribed. Moreover, there exits several factors which distinguish the two drugs making them dissimilar to the imaginary chemist.

119. The stylisation adopted by the parties for their respective marks, on the labels, bears no resemblance to each other. The marks are written in different fonts and visual formats, and are accompanied by distinct packaging elements, including differing background colours, label configurations and box structures. The Appellant's mark 'BEVATAS' has been reflected in two colours where letters BEVA are in a colour distinct from TAS. There is thus, a subtle visual break-up of the mark leading a person to read it as 'BEVATAS' 

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The Respondent on the other hand has visually represented its mark in single colour red, with the stylisation of the letter 'V'. On a visual impression the Respondent's mark is seen as BEVETEX 

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120. The overall visual impression created by the two rival marks on their packaging are, therefore, clearly distinguishable to the eye. As held in **Kaviraj Pandit Durga Dutt Sharma** (supra), while marks must be

compared as a whole, the surrounding get-up and presentation are relevant in assessing deceptive similarity. In the present case, the stark differences in packaging and visual presentation ensure that the chemist of average intelligence and imperfect recollection, is unlikely to mistake one product for the other.

121. The Appellant has relied upon the distinct label, packaging and features of the Appellant's anti-cancer drug 'BEVATAS' and the label, packaging and features of Respondent's anti-cancer drug 'BEVETEX'. A crucial distinguishing feature is that both products prominently display their active ingredient 'Bevacizumab' in the Appellant's product and 'Paclitaxel' in the Respondent's product.

122. We are of the considered opinion that the packaging of the two drugs is distinct. The clear and prominent disclosure of the molecule in large font ensures unmistakable identification of the drug and significantly reduces any possibility of confusion, particularly for medical professionals such as chemist and Oncologists. The packaging of the Appellant's product sold under the mark 'BEVATAS' is entirely distinct from that of the Respondent's product sold under the mark 'BEVETEX'. The colour scheme, layout, font style, size and placement of the mark, as well as the overall presentation, are materially different.

123. The submission of the Respondent[39] at paragraph 21(D) of the plaint that a chemist, who finds that its stock of Respondent's drugs BEVETEX is exhausted would in such a situation vend the Appellant's drug to the patient or his attendant, in our considered opinion is in addition to being a ludicrous suggestion, such an action would qualify as gross negligence by the chemist

[39] in the plaint and the evidence affidavit

rather than a case of likelihood of confusion or accidental negligence.

B. The two drugs are not even similar in idea

124. As discussed hereinabove, Appellant's drug 'BEVATAS' is a rDNA drug in which the active ingredient is the molecule of 'Bevacizumab' and the Respondent's drug 'BEVETEX' is a Synthetic Chemical Drug with the active ingredient being the molecule of 'Paclitaxel', thus the two drugs are not even similar in idea. Neither an Oncologist who prescribes the drug nor a chemist who vends the drug is likely to be confused and tend to think the drugs to be substitutes of each other. The active ingredients of the respective drugs are prominently printed on the packaging and therefore, the chemist or the purchaser, who has an imperfect recollection would also recollect the name of the molecules printed on the package. In our opinion, molecule 'Bevacizumab' and molecule 'Paclitaxel' are incapable of being confused.

C. Class of purchasers who are likely to buy the two drugs under the rival marks

125. This bring us to the class of purchasers, who are likely to buy these two drugs. It is admitted on record that a 100mg injection sold by the Appellant is for Rs. 25,990/- and a 100mg injection sold by Respondent is for Rs. 12,500/-.

126. Since these are anti-cancer drugs, a high degree of care and caution is bound to be exercised by the patient and his/her attendant at every stage of purchase and use. In our considered opinion, the degree of caution exercised by the patient and the attendant is likely to be very high considering the fatality of the disease of cancer and the said persons are unlikely to adopt a reckless or a casual approach in purchasing the drug.

127. In addition, since the two drugs are of high pricing, the purchaser is likely to be more cautious in verifying the correct price of the product and is

unlikely to buy the Appellant's expensive drug for Respondent's less expensive drug or vice-versa. In fact, the price difference itself would alert the consumer to the distinction between the drugs. [Re: **Schering Corporation** (supra)[40]]

128. The two drugs are Schedule H drugs, prescribed for serious, life-threatening diseases such as cancer. The entire sequence of steps beginning from diagnosis of the indication by the Oncologist, prescription (by the Oncologist) and administration of the drug to the patient under medical supervision and regulatory control in an oncology clinic, leave little to no scope for casual or uninformed consumer choice during the purchase of the drug in question.

129. The Respondent has, in any event neither pleaded nor adduced any evidence to suggest that patients or their attendants are likely to be confused.

D. Mode of purchasing the two drugs sold under the rival marks

130. The drugs in question are Schedule H drugs, which have to be sold by the pharmacist only on the prescription of an Oncologist. The Respondent has not alleged in the plaint or in its affidavit of evidence that there can be likelihood of confusion with the Oncologist, at the time of prescription. The reason for the Respondent to not allege such a confusion is not far to find, as admittedly the molecule of both the drugs is distinct and incomparable as they are prescribed for absolutely different indications in a patient.

131. The mode of purchasing is strictly regulated, being contingent upon a specialised Oncologist's prescription and hospital-based administration, and the degree of care exercised at every stage, from prescription to dispensing, is exceptionally high, thereby significantly negating any real likelihood of

[40] At paragraph no. 111.

confusion. [Re: **Sun Pharma v. Hetero** (supra)].

132. The Respondent *orally* sought to contend that the comparison of the rival marks should be undertaken by the Court on the presumption that the anti-cancer drug will be sold by the chemist, without the prescription, over the counter, on an oral demand by the patient or his attendant. Though no such plea was taken in the pleadings or the affidavit of evidence of the witness, such a stand was taken in the cross-examination. This plea cannot be considered as it is beyond pleadings and the cross-examination is also not proof of this practice. However, in view of our finding on *no* phonetic similarity between the marks and the dissimilarity of the two drugs, even otherwise the said oral submission of the Respondent is without any merit.

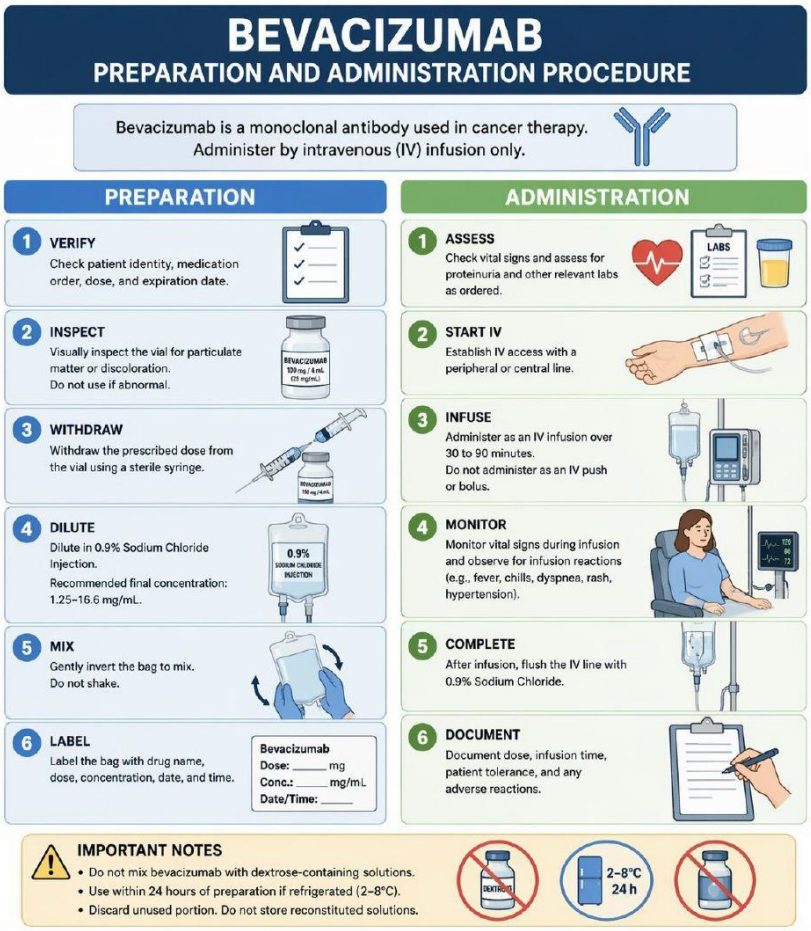
E. Mode of administration of the two drugs

133. The administration of the two drugs constitutes an additional and critical distinguishing factor. Both drugs are administered intravenously in oncology clinic under strict medical supervision; however, their preparation, dilution, dosage protocols, and infusion schedules are materially different. The Appellant has demonstrated that the preparation which the nurse has to undertake before administering the two drugs and the mode of administration, are both distinct. The Appellant has contended that it is inconceivable that a trained nurse would administer the drug of the Appellant in place of the drug of the Respondent or vice-versa.

In other words, a trained nurse, who is instructed to administer a drug containing the molecule ‘Bevacizumab’ cannot mistakenly administer a drug containing the molecule ‘Paclitaxel’ or vice-versa. A chart on the modes of administration of the Appellant’s drug and Respondent’s drug as noted in the impugned judgment dated 28.03.2026 at paragraph 9.6 is as under: -

PARTICULARS	BEVATAS	BEVETEX
Reconstitution	It should be diluted with 0.9% sodium chloride solution for injection. The concentration of the final Bevacizumab solution should be kept within the range of 1.4 to 16.5 mg/ml.	It should be diluted with 5% w/v dextrose injection in 1:20 ratio. Each ml of reconstituted nanodispersion contains 5 mg paclitaxel (Drug concentration will be 5 mg/ml).
Administration	The initial dose should be delivered over 90 minutes as an IV infusion. If the first infusion is well tolerated, the second infusion may be administered over 60 minutes. If the 60-minute infusion is well tolerated, all subsequent infusions may be administered over 30 minutes. Bevacizumab infusion frequency varies from 2 weekly to 3 weekly depending on the indication.	It has to be administered as intravenous infusion over 30 minutes every 3 weeks.

134. The Appellant has also produced a chart depicting the administration of its drug: -



135. The Respondent has not disputed the contents of the aforesaid table as regards the mode of administration of the two drugs to the patient.

136. Notably, the Respondent has not proved any likelihood of confusion at the level of chemist or a trained nurse.

This Court is of the considered opinion that the Appellant has been able to demonstrate that a trained nurse cannot be confused between the two drugs and the Respondent herein has not been able to show any likelihood of confusion by a trained nurse leading to wrongful administration of the two drugs.

137. We have already discussed in the earlier part of the judgment that Respondent has been unable to show likelihood of confusion on the part of

the chemist, who would dispense the drug or the patient (or his attendant), who would purchase the drug.

138. Upon a comprehensive appraisal of the evidence on record, it is evident that the Respondent has failed to establish, even a sliver of doubt as regards existence of a likelihood of confusion on the part of the public. The other factors taken into consideration in this Section of the judgment also establish that there was no likelihood of confusion and therefore, Issue Nos. 3 and 4 ought to have been decided in favour of the Appellant.

VIII. Whether the rival marks are deceptively similar?

139. In view of the aforesaid findings, we have arrived at the following conclusions that: (i) the two drugs, though falling within the broad category of anti-cancer pharmaceutical preparations, are distinct in composition, therapeutic use and cannot, under any circumstances, be prescribed interchangeably and are therefore dissimilar drugs; (ii) for the same reasons, the mode and manner of administration of the two drugs is completely distinct; (iii) the letters 'BEV'/'BEVA', being derived from the molecule 'Bevacizumab', are publici juris and are used by several other pharmaceutical companies either as a prefix or a suffix for this drug; (iv) the packaging, trade dress and labelling of the two drugs are materially distinct, with the active ingredients prominently and unequivocally displayed by the manufacturers; (v) the class of purchasers are aware and exercise a heightened degree of care and caution while purchasing the two drugs, which are also expensive; and (vi) the drugs fall in Schedule H and are sold on the prescription of an Oncologist only.

140. Section 2(1)(h) of the Act defines a mark as 'deceptively similar' if it so nearly resembles another mark as to be likely to deceive or cause

confusion. The controversy at hand squarely turns on the application of this limb alone, i.e., whether the impugned mark 'BEVATAS' bears such resemblance to the Respondent's mark 'BEVETEX' that it is likely to result in deception or confusion in the course of trade. Thus, the question to be determined remains confined to whether, applying the settled tests of visual, phonetic and overall similarity, coupled with the likelihood of confusion among the relevant class of purchasers, the mark 'BEVATAS' can be said to 'so nearly resemble' 'BEVETEX' so as to attract the mischief of Section 2(1)(h) of the Act.

141. The test for determination of deceptive similarity of the rival marks in the case for infringement is the same as in a passing off action, where the marks are not identical, as held by the Division Bench in **GUFIC** (supra). Thus, in a suit for infringement, post recording of evidence at the final stage, determination of the issue of deceptive similarity of the two marks for the two drugs, is an issue which requires the trial Court to take into consideration inter-alia the factors, as enlisted and illustrated at paragraph 35 of the judgment of Supreme Court in **Cadila-2001** (supra), and to determine the existence and the effect of those factors, on the issue of deceptive similarity between the two drugs, on the basis of the documentary and oral evidence led by the parties. The issue of deceptive similarity of the rival marks, which are not an imitation, cannot be based only on adjudication of visual and phonetic similarity of the marks by the Court [since these are not identical marks], as this is only one of the factors, the rest of the factors need to be taken into consideration to reach a conclusion of deceptive similarity.

142. We note that the learned Single Judge has determined the question of deceptive similarity solely on the basis of the resemblance in the rival marks

and failed to discuss the other factors enlisted by the Supreme Court in **Cadila-2001** (supra) at paragraph '35'. The question of deceptive similarity has to be determined by the Court after examining each of the factors and not merely on the comparison of the word marks. In the impugned judgment, the learned Single Judge without deliberating on these rival contentions of the parties and without recording any reasons has straight off concluded at paragraph 28 of the impugned judgment that the two drugs are similar. However, we are unable to assent with the said findings of the learned Single Judge.

143. In view of the aforesaid, the marks 'BEVATAS' and 'BEVETEX', when assessed holistically, do not 'so nearly resemble each other' as to be likely to cause confusion within the meaning of Section 2(1)(h) of the Act. When assessed as a whole, the marks differ materially in their visual appearance, structure and phonetic impact. Further, the surrounding circumstances namely, the distinct active ingredients, differing therapeutic profiles, specialised administration under medical supervision, and the absence of any evidence of likelihood of confusion or actual confusion despite prolonged concurrent use from 2016 to 2026; militate against any real likelihood of deception. In such a factual matrix, the resemblance between the marks is neither so close nor of such a nature as would mislead the class of purchasers who are likely to buy these highly priced specialized drugs and therefore, falls outside the ambit of 'deceptive similarity'.

144. In view of the above, this Court is of the considered opinion that the rival marks, when assessed holistically, do not exhibit deceptive similarity, therefore, cannot be said to cause any confusion on the part of public.

IX. Authorities cited by the Respondent are distinguishable, both on facts and in law

145. The judgments relied upon by the Respondent proceed on materially different factual foundations with respect to the nature of the drugs involved and are judgments rendered by the Court, mostly at an interim application stage where the Court formed a prima facie opinion, whereas the present case is for a post-trial decision, pertaining to dissimilar i.e., non-interchangeable anti-cancer drugs, administered to the patient in an oncology clinic by a trained nurse under the supervision of the Oncologist. In this case, the Respondent has been unable to lead any evidence which proves existence of likelihood of confusion between the two dissimilar drugs amongst the relevant class of the public.

146. **United Biotech v. Orchid Chemicals** (supra) (FORZID v. ORZID), this was the case pertaining to the rectification of the trademarks register. The Court concluded that on a visual and phonetic comparison the impugned mark FORZID was deceptively similar to the earlier registered mark ORZID. The competing marks FORZID and ORZID were used for the same drug molecule (Ceftazidime), administered intravenously, where the risk arose from direct substitutability of identical therapeutic agents with differing dosages. The Court's concern was precisely this interchangeability of drugs leading to dosage errors.

In the present case, we have held that the rival marks are not deceptively similar. Moreover, the two drugs are fundamentally different and are admittedly non-substitutable.

147. **Sun Pharma v. BDR Pharmaceuticals** (supra) (LABEBET v. LULIBET) is likewise distinguishable. This was a final judgment for permanent injunction passed by the Court on the basis of the pleadings and documents filed by the parties. The parties elected to not lead oral evidence.

Firstly, the Court concluded that the rival marks are phonetically, visually and structurally similar thus there was a possibility of deception or confusion to the purchaser of these medicines. The goods therein could be self-administered by the patient; the plaintiff's drug was sold in the form of a tablet/injectable and the defendant's drug was sold in the form of lotion/cream. Therefore, the dissimilarity of the goods was not considered as a relevant factor for not granting injunction.

However, the present case arises post-trial, where the Respondent was required to lead evidence to substantiate its plea of likelihood of confusion due to the rival marks in the relevant section of the public, which it has failed to do. Further, unlike LABEBET, the subject anti-cancer drugs are not casually dispensed or self-administered products, but are oncology drugs administered under strict medical supervision, thereby materially altering the likelihood of confusion analysis.

148. **Novartis v. Crest Pharma** (supra) (SECEF v. CECEF) is also inapposite. This order was passed at an interim stage under Order XXXIX Rules 1 and 2 CPC. The Court came to a conclusion that the rival marks, when written in any other language except English, would be identical. The Court concluded that the rival marks in the English language were also deceptively similar. The Court rejected the submission of the defendant that there were several other traders using the suffix CEF, as the defendant failed to demonstrate this fact by producing the goods of the third parties. In this case, the plaintiff's drug was available in tablet and oral suspension form whereas the defendant's drug was available in injection form. However, this distinction did not impress the Court as it observed that a patient may not be aware that the plaintiff's drug is not available in an injection form. The

plaintiff's drug could be self-administered.

In the present case, we have already concluded above that there is no basis for the Court to conclude any likelihood of confusion or wrong administration of the two drugs.

149. As regards **Nutrica v. Morepen** (supra), the Respondent has relied upon paragraph 9 of the said judgment to contend that the distinction in the packaging and the fact that the two drugs are not substituted for each other is irrelevant while deciding the issue of deceptive similarity of marks for goods which fall in the class of medicinal and pharmaceutical preparations. As is evident from paragraph 9, the said view was expressed by the Court in the context of forming a prima facie view while deciding an interim injunction application.

However, as mentioned above, the present case is decided post-trial. Based on the preliminary discussion at Section VII of this judgement, this Court deemed it appropriate to test the likelihood of confusion on the part of the public based on other surrounding circumstances and concluded that, there is no possibility of likelihood of confusion on the part of the public.

150. As regards **Glenmark v. Sun Pharma** (supra), reliance of the Respondent is misplaced. In this case, the competing marks were ISTAMET and INDAMET. It was contended that 'MET' is publici juris. The Division Bench on comparison of the marks as a whole opined that the marks are structurally and phonetically similar, and the Division Bench on its prima facie view upheld the injunction granted by the learned Single Judge. The learned Single Judge, in that case held that there was a striking resemblance between the marks and there were high chances of confusion especially in cases where patients are self-administering the medication.

However, in this case, as discussed above in detail, the two marks are not structurally and phonetically similar, the two drugs are administered by a trained nurse in an oncology clinic under the supervision of an Oncologist and the patient has no role to play in its administration, there is stark dissimilarity between the two drugs and therefore, as concluded by this Court, there is no likelihood of confusion on the part of the public.

151. Additionally, except **United Biotech v. Orchid Chemicals** (supra) which was pertaining to rectification of the mark and **Sun Pharma v. BDR Pharmaceuticals** (supra) where parties elected not to lead any oral evidence, remaining three decisions were orders for grant of interim injunction and reiterate the principle of a stricter approach in pharmaceutical cases; however, neither dispenses with the requirement of a holistic, evidence-based assessment under **Cadila-2001** (supra) by the trial Court which is deciding the matter finally after appreciating the matter led by the parties.

In the present case, the Respondent has led no evidence whatsoever from the relevant class (Oncologists, chemist, or trained nurse), and the two drugs are administered in controlled oncology settings under supervision of an Oncologist with no possibility of substitution, intentional or accidental. The Respondent's attempt to rely on a 'slightest possibility' standard is misconceived, as in the present case the two rival marks does not, in any manner resemble each other.

X. No public interest is being sought to be protected by the Respondent, and it is pursuing its own commercial interest

152. The Respondent has made a virtue out of its submission that it is pursuing the underlying suit only in public interest and has no commercial interest at all. In proof of this submission, it is contended that the

Respondent has abandoned its claims for damages, rendition of accounts and costs of the underlying suit.

153. The submissions of the Respondent are a red herring. The Respondent has abandoned its claim for damages, rendition of accounts and costs of the underlying suit because it concedes that there is no passing of the Appellant's drugs for the drugs of the Respondent. Respondent has admitted that the drugs sold by the Appellant are for distinct indications and therefore, the Appellant's drugs are not a substitute for the Respondent's drugs, and therefore, they cannot be any loss of sales of the Respondent's drug. The Respondent has also admitted that the use of the Appellant's mark has not led the public to believe of any association between the two marks. In these facts, the Respondent's plea that it is not pressing for monetary reliefs is a misnomer as the Respondent even otherwise would not have been entitled to any monetary benefits, since it has suffered no loss of revenue or damage to its goodwill.

154. The submission of the Respondent that it has no commercial interest in these proceedings is untrue. The Respondent was pursuing the underlying suit on the claim of infringement. This claim of infringement is solely based on the commercial interest of the Respondent, where the Respondent has asserted in the plaint that the use of the impugned mark 'BEVATAS' by the Appellant would erode the distinctiveness of the Respondent's mark 'BEVETEX'. A trademark is a valuable asset, and traders assign monetary value to these marks. The Respondent's contest in the underlying suit for opposing the Appellant's use of the impugned mark 'BEVATAS' is based on this commercial interest, and this was also evident during arguments

where discussions for amicable resolution were only based on the spelling of the rival marks.

We, therefore, find no merit in the submission of the Respondent that this litigation is being prosecuted by it in public interest. In fact, we are of the considered view that Respondent had no cause of action to allege infringement and pursue the underlying suit against the Appellant. The Respondent was also conscious of this fact as it was evident to the Respondent that there has been no loss suffered by it and the Respondent has only pursued this litigation for its misconceived commercial interest as regards its mark 'BEVETEX'.

XI. Conclusion

155. In view of the foregoing discussion, the impugned judgment dated 28.03.2026 is hereby set aside. The summary of findings is as follows: -

a. The plaint was vexatiously filed for the actions of passing off, unfair advantage, misappropriation of goodwill, misrepresentation etc., even though the Respondent/plaintiff was aware, prior to the filing of the underlying suit, that the Appellant's drug is not a therapeutic substitute for a Respondent's drug and therefore, there was no diversion of sales or any commercial loss to the Respondent.

b. The plaint failed to disclose clear facts constituting its cause of action for claiming infringement and the relevant sub-section of Section 29 of the Act and was therefore liable to be rejected at the threshold even for the said claim of infringement.

c. The Respondent at trial failed to establish, by any cogent oral or documentary evidence, any likelihood of confusion amongst the relevant class of public, i.e., Oncologists, chemists, trained nurses or

patients or their attendants. PW-1, the sales representative of the Respondent was not a competent witness for proving likelihood of confusion on the part of the public.

d. The two drugs sold under the marks 'BEVATAS' and 'BEVETEX', though broadly falling within the category of anti-cancer pharmaceutical preparations, are distinct and dissimilar in composition, therapeutic purpose, indication, dosage and mode of administration, and are admittedly not therapeutic substitutes of each other. The two drugs are therefore not identical goods or even closely similar goods.

e. The learned Single Judge, at post-trial stage, erred in determining infringement and presumed likelihood of confusion on the part of the public solely on a bare structural and phonetic comparison of the rival marks undertaken by the Court itself. In view of the distinction of the two drugs and their mode of administration, no presumption of likelihood of confusion was available and it had to be proved by the Respondent as a matter of fact. However, learned Single Judge failed to carry out an evidence-based assessment of the Respondent's allegation of deceptive similarity and likelihood of confusion on part of the public. The learned Single Judge failed to take into consideration the factors enlisted by Supreme Court in **Cadila-2001** (supra) for deciding deceptive similarity between the marks.

f. The learned Single Judge while determining deceptive similarity between the rival marks failed to take into consideration the distinctive packaging of the goods, class of purchasers as well as the price of the goods and the fact that both the drugs are Schedule H

drugs sold under the prescription of an Oncologist, administered in an oncology clinic by a trained nurse under the supervision of the Oncologist.

g. The suffix 'BEV' and 'BEVA' are publici juris for anti-cancer drugs containing the molecule 'Bevacizumab'.

h. The rival marks 'BEVATAS' and 'BEVETEX', when compared as a whole, are neither visually, structurally nor phonetically similar, and thus the impugned mark 'BEVATAS' does not constitute infringement of the Respondent's registered trademark mark 'BEVETEX'.

i. The suit instituted by the Respondent was not in public interest and was pursued solely to protect Respondent's commercial interest in its mark 'BEVETEX'.

156. In view of the findings returned in this judgement, the findings of the learned Singh Judge on Issue Nos. 3, 4, 7, 8, 9 and 10 are hereby set aside. The said issues are decided in favour of the Appellant, and the suit is accordingly dismissed.

157. The findings on Issue Nos. 1, 2 and 6 are findings of facts, the same are undisputed and require no interference in this appeal. Also, the Appellant has not pressed its appeal against the findings on Issue No. 5 and therefore the same, as well, does not require interference. Nonetheless, the findings of the learned Single Judge on Issue Nos. 1, 2, 5 and 6 which are in favour of the Respondent, do not entitle the Respondent to any relief of permanent injunction against the Appellant.

Costs

158. The costs of the suit and this appeal are awarded in favour of the Appellant and against the Respondent. The Appellant shall file its bill of costs in terms of Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules, 2018 within 30 days of this judgment. It is clarified that the Appellant will be entitled to claim counsel costs for each hearing limited to one (1) counsel on record and one (1) senior counsel and not for multiple counsels, who may have attended the hearing. The Appellant will be entitled to claim legal costs paid to the lawyer for drafting of the pleadings in the underlying suit and the appeal. It is clarified that the claim for costs shall not include costs incurred by Appellant towards preparation of the case hearings and conference.

159. For this purpose, the representatives of the Appellant shall appear before the Taxation Officer on 13.07.2026, who shall determine the actual costs incurred by the Appellant in the present appeal. Costs as determined by the Taxation Officer shall be paid by the Respondent within a period of eight (8) weeks from the date of determination.

160. The present appeal is allowed in the aforesaid terms.

161. The Registry is directed to draw up the decree accordingly.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

May 29, 2026/rhc/hp/AM/IB