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

INTERIM APPLICATION NO.1606 OF 2026
IN
COMMERCIAL IP SUIT NO. 679 OF 2025

Alkem Laboratories Ltd. ... Applicant/Plaintiff.

Versus

Numen Pharma Private Limited ... Respondent/Defendant.

Mr. Hiren Kamod a/w. Mr. Mahesh Mahadgut, Mr.Kaivalya Shetye and MsKalyani Punikar i/by Mahesh Mahadgut for the Applicant/Plaintiff.
Ms. Archana Deshmukh a/w. Ms.Srishti Singhania, Mr.Manas Adhangle and Mr.Om Singhania i/by Singhania&Co. for the Respondent/Defendant.

Coram : Sharmila U. Deshmukh, J.
Reserved on : April 24, 2026
Pronounced on : June 08, 2026

ORDER :

1. The captioned suit is an action for infringement of trade mark and passing off vide order dated 8th October, 2025, this Court had granted ad-interim reliefs against infringement of the Plaintiff's registered mark.

2. Inadvertently, the order of 24th April, 2026 reserving the order in Interim Application No.1606 of 2026, mentions the incorrect title of Commercial IP Suit No.679 of 2025. The order of 24th April, 2026 to read accordingly.

3. The Plaintiff and the Defendant are engaged in the business of manufacturing and marketing of medicinal and pharmaceutical preparations. The case of the Plaintiff is that it adopted the trade mark "ALCIPRO" in the year 1990 and secured registration of its mark on 4th April, 1990 in class 5, which registration is valid and subsisting. Subsequently on 28th September, 1998, the Plaintiff applied and secured registration of its mark "ALCIPRO-TN". The Plaintiff's drug is used for treating bacterial infection, and infections of urinary tract, nose, throat skin, soft tissues and lungs and contains the active pharmaceutical ingredient (API) "Ciprofloxacin". Over the years, the Plaintiff has introduced various variants of the trade mark "ALCIPRO" such as ALCIPRO 250 MG tablet, ALCIPRO 2MG/ML Infusion, ALCIPRO 1000 MG Tablet etc. The copy of the statement of sales turnover duly certified by the Chartered Accountant is appended to the plaint. The Plaintiff has also annexed specimen promotional material and it is stated that there are no separate promotional expenses maintained product wise however, approximately 0.27% of the expenses can be attributed to the "ALCIPRO" range of products. The Plaintiff has also annexed the specimen sale invoices to the plaint.

4. It is pleaded that in or around December, 2023, the Plaintiff

learnt of an application advertised in the trademark journal for registration of the trade mark "ACIPROX" of the Defendant on 16th January, 2023 on a proposed to be used basis. The Plaintiff filed a notice of opposition and in response to the notice, the affidavit filed by the Defendant claimed use of the impugned mark since the year 2023.

5. The Defendant has opposed the application by filing an affidavit-in-reply dated 22nd November, 2025 and an additional affidavit-in-reply dated 19th March, 2026. It is contended that the Plaintiff cannot monopolise the trade mark ALCIPRO as the word "CIPRO" is descriptive and commonly used to denote "Ciprofloxacin". It is further submitted that the Defendant's trade mark "ACIPROX" is not identical or deceptively similar to the Plaintiff's trade mark and there is no likelihood of confusion or deception when the rival marks are compared as a whole. It is further pleaded that before adopting the impugned trade mark "ACIPROX", the Defendant has conducted a search in the Trade Mark Registry and did not find any trade mark deceptively similar to the Defendant's trade mark and has therefore, bonafide and honestly adopted the same.

6. It is further submitted that the Defendant does not sell any

product under the standalone trademark ACIPROX and always uses it in conjunction with distinguishing suffixes to denote specific formulations, strengths, or dosages forms, which are essential differentiators and extensions that clearly identify the therapeutic purpose or pharmaceutical form of each product. It is contended that the Defendant's product is used for short-term relief of pain and inflammation and is thus fundamentally different and not likely to cause any confusion, especially when the said drugs are Schedule "H" drugs sold only on a valid prescription issued by a qualified doctor.

7. It is further submitted that the Plaintiff's mark is derived from the chemical compound "Ciprofloxacin", which is mentioned in the list of International Non-Proprietary Names, and there is a prohibition under Section 13 of the Trade Marks Act, 1999. It is further submitted that there is a visual difference in the packaging of the products, the colour combination and the name of the Defendant company and its logo "NUMEN", are written in a highly distinct and prominent manner, which lends distinctiveness and cannot lead to any confusion between the rival products. It is further contended that there is no phonetic similarity and that the name of the product is written in Devnagari script below the

English word and therefore there is no question of any confusion. It is further submitted that there are several medicines with the mark containing the word “CIPRO” available in the market and on e-commerce websites and a public search conducted on the Trade Mark Registry found that there are at least 314 registered trade mark containing the word “CIPRO”. It is contended that the impugned mark “ACIPROX” is derived from its active ingredient ACECLOFENAC and the word PROX is derived from PYREXIA thereby signifying a formulation indicated for pain and fever relief.

8. The rejoinder affidavit filed by the Plaintiff reiterates the stand taken in the plaint.

9. Mr. Kamod, learned counsel appearing for the Plaintiff would submit that rival marks are “ALCIPRO” and “ACIPROX”, which are having different compositions and are used for treating different ailments, and even the slightest possibility of confusion is likely to have disastrous consequences. He submits that the Plaintiff secured registration of its mark in 1990 and has invented the mark from the molecule “Ciprofloxacin” and has used the suffix “AL” which lends distinctiveness. He submits that the sales turnover and the promotional expenses demonstrate the reputation and goodwill of the Plaintiff who has been using the registered trade

mark since the year 1990. He submits that the specimen invoices annexed to the plaint shows the use of mark since the year 1991 and the Plaintiff is a prior user and registered proprietor of the mark "ALCIPRO". He submits that the defence that the Plaintiff cannot claim any monopoly over molecule "Ciprofloxacin" is baseless as the Plaintiff does not claim any monopoly over "Ciprofloxacin" but in its invented mark which is derived from a portion of the molecule and the suffix "AL" which lends distinctiveness. He submits that the fact that the Plaintiff's registered mark has been registered under the erstwhile Trade and Merchandise Act, 1958 indicates the distinctiveness of the mark. He would further submit that the mark "ALCIPRO" is not identical or even deceptively similar to the molecule "Ciprofloxacin" so as to attract Section 13 of the Trade Marks Act even otherwise. He submits that the anti-dissection rule is the established rule and the Plaintiff is seeking to dissect the mark syllable to syllable in its affidavit-in-reply to demonstrate dis-similarity which is impermissible. He would further submit that the defence of dis-similarity on the basis of suffixes to the impugned mark is unacceptable as they are non distinctive elements.

10. He would submit that explanation given by the Defendant for

adoption of the impugned mark is unacceptable as the impugned mark cannot be combination of portions an ACECLOFENAC and PYREXIA. He submits that the Defendant has only stated that they have conducted a search in the trade mark registry without annexing any document to show that such a search has been conducted. He submits that the defence of the drugs being schedule "H" drugs is no longer acceptable as the position has now been well settled by the decision of ***Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd.***[1]

11. He would further submit that the defence of Section 12A of the Commercial Courts Act is no longer available in view of the decision of the Hon'ble Apex Court in the case of ***Novenco Building and Industry A/S vs. Xero Energy Engineering Solutions Private Ltd. and Anr.***[2],.

12. He submits that the difference in packaging is irrelevant in case of medicinal products which are identified by the trade marks. He submits that the Defendant has taken website printouts to demonstrate that there are other similar trademarks, without any evidence of open, continuing and extensive use since the year 1990, which was the period when the Plaintiff adopted the mark. In

1 *(2001) 5 SCC 73*
2 *2025 SCC OnLin 2278*

support, he relies upon the following decisions:

(i) Schering Corporation & Ors. vs. Kilitch Co. (Pharma) Pvt. Ltd. [3]***,***

(ii) Boots Company PLC, England and Anr. vs. Registrar of Trade Marks, Mumbai and Anr.[4]***,***

(iii) Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd. *(supra)****,***

(iv) Medley Laboratories (P) Ltd., Mumbai and Anr. vs. Alkem Laboratories Limited[5]***,***

(v) Macleods Pharmaceuticals Limited vs. Union of India and Ors.[6]***,***

(vi) Encore Electronics Ltd. vs. Anchor Electronics & Electricals Pvt. Ltd.[7]***,***

(vii) Sun Pharma Laboratories Limited vs. Zawadi Healthcare Limited[8]***,***

(viii) Novenco Building and Industry A/S vs. Xero Energy Engineering Solutions Private Ltd. and Anr (supra),

(ix) Sun Pharmaceutical Industries Ltd. vs. Meghmani Lifesciences Ltd. & Anr.[9]

13. Ms. Deshmukh, learned counsel appearing for the Defendant submits that the Plaintiff uses a clipped version of an INN which is specifically prohibited under Section 13 of the Trade Marks Act and has merely prefixed the alphabets "AL". She submits that there are about 314 marks existing on the register of trade mark registry and

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3 *1990 SCC OnLine Bom 425*
4 *2002 SCC OnLine Bom 300*
5 *2002 SCC OnLine Bom 444*
6 *2023 SCC OnLine Bom 408*
7 *2007 SCC OnLine Bom 147*
8 *Decision dated 1st April, 2026 in IA(L) No.4610 of 2023 in COMIP No.183 of 2025*
9 Decision dated 8th April, 2026 in Comm.Appeal (L)No.42382 of 2025 with connected matters.

the Defendant has been selectively targeted. She submits that the Plaintiff is seeking monopoly over the molecule "Ciprofloxacin" which cannot be permitted. She would further submit that there is no phonetic similarity between the marks as phonetically "ACIPROX" is pronounced as A-SI-PROX. She submits that the name of the product is written in English and in Devnagari script on the impugned product and therefore, there is no question of confusion amongst the consumers. She would further submit that even in English language the alphabet "X" of the Defendant's trade mark creates distinct sound, which makes the Defendant's trade mark different and distinguishable from the Plaintiff's registered trade mark. She would further submit that upon comparison of rival marks as a whole, there is no any deceptive similarity. She submits that the packaging of the Defendant's product, the colour combination and the manner in which the marks are written are completely different.

14. She would further submit that the Defendant's logo is prominently displayed on its product which indicates that there is no intention to ride upon the Plaintiff's goodwill and reputation. She would submit that the drugs are schedule "H" drugs prescribed by the Doctors and sold by pharmacists, and no evidence of real

confusion is produced. She would further submit that the Defendant has applied for registration of its mark indicates that its adoption is bonafide. She submits that there are many similar sounding marks which are existing in the market and it is not necessary to show extensive use of these marks. She would further submit that the Plaintiff's products are also listed on e-commerce website along with other similar sounding trade marks. She would further submit that one of the marks "CALCIPRO", which is similar to the Plaintiffs trade mark is also available and the mark has been registered in the year 1986. In support, she relies upon the following decisions:

(i) ***Sun Pharmaceutical Laboratories Ltd. vs. Hetero Healthcare Ltd. and Anr.*** [10]**,**

(ii) ***Aristo Pharmaceutical Private Limited vs. Healing Pharma India Private Limited and Ors.*** [11]**,**

(iii) ***F. Hoffmann-La Roche and Co. Ltd. vs Geoffrey Manners & Co. Pvt. Ltd.*** [12]**.**

15. Rival contentions now fall for determination:

16. The rival products are medicinal preparation and the Plaintiff's drug bearing the trade mark "ALCIPRO" containing the molecule "Ciprofloxacin" is used in the treatment of bacterial

10 *2022 SCC OnLine Del 2580*
11 *2025 SCC OnLine Bom 4693*
12 *(1969) 2 SCC 716*

infection, urinary tract infection, nose, throat infection. On the other hand, Defendant's drug marketed under the trade mark "ACIPROX" having ACECELOFENAC as its active pharmaceutical ingredient is prescribed for short term relief of pain, inflammation and swelling in musculoskeletal conditions. The compositions of the rival drugs are different and the ailment that it treats is also different. There is no gainsaying that consumption of one drug for the other would result in hazardous consequences.

17. The contest is between "ALCIPRO" vs ACIPROX". The Defendant has deleted the alphabet "L" and has added the alphabet "X" to its mark. Ms. Deshmukh would submit that the rival marks cannot be dissected, and at the same time would submit that the rival marks are not phonetically similar as ACIPROX is pronounced as A-SI-PROX whereas the Plaintiff's mark ALCIPRO will be pronounced as AL-SI-PROX. She would therefore want this Court to compare the rival marks syllable by syllable in order to consider the aspect of phonetic similarity. Such a course has been disapproved by the Hon'ble Division Bench of this Court in ***Sun Pharmaceutical Industries Ltd. vs. Meghmani Lifesciences Ltd. & Anr.*** (supra), which applied the anti-dissection rule while considering the rival marks "RACIRAFT" vs "ESIRAFT". The Hon'ble

Division Bench noted that the Single Judge had considered the marks syllable by syllable " ECI-ACI" which is not permissible as the mark has to be considered as a whole.

18. That being the position settled by the Hon'ble Division Bench, it is not possible for this Court to accept the submission that the marks are dissimilar by comparing the marks syllable to syllable. The rival marks ACIPROX *versus* ALCIPRO, when compared as whole are phonetically similar, and the mispronunciation or hurried utterance of the words would be similar sounding. There is also possibility of the terminating alphabet "X" being slurred over and the Defendant's trade mark ending with the consonant "X" is not sufficient to hold that there is no phonetic similarity between the two marks. It is not uncommon even for the educated class of persons to mispronounce similar sounding drugs as they are not words of common usage. Greater care is thus required in case of medicinal preparations to eliminate possibility of any confusion and especially so when the compositions differ.

19. It is the bare possibility test which is required to be applied in case of medicinal preparations and even the bare possibility of confusion is liable to be arrested. Considering the rival marks against the background of multi-lingual society in India coupled

with illiteracy, which was considered by the Hon'ble Division Bench, in my view, the two marks are capable of creating confusion by reason of their phonetic similarity.

20. The Hon'ble Division Bench in ***Sun Pharmaceuticals Ltd vs Meghmani Lifesciences Ltd.*** (supra) declined to accept that the difference in the colour theme, the manner of description of product and the packaging would distinguish the marks and held that it is the phonetic similarity between the rival marks which has the potential of confusion and is the real test to determine the similarity between the two marks.

21. In case of medicinal products, the drugs will be prescribed/sold by brand name. Whether prominence is given to the house mark or the molecule is immaterial as the prescriptions will be of the brand name. In case of medicinal preparations, the drugs are not picked off the shelf by the consumer as in case of ordinary consumer goods. The writing of the mark in Devnagari script is immaterial as both drugs are not likely to be handed over to the consumer to compare and distinguish. The drug will be asked for either orally or by prescription and the pharmacist will hand over the drug which in case of similar sounding drugs may have the possibility of one being handed over for the other.

22. The consequence of the patient taking one drug for the other may result in disastrous consequences. The measure of care which is required to be taken in case of deceptively similar sounding marks of medicinal and pharmaceuticals preparations has been reiterated time and again. The authoritative pronouncement on the issue is the decision of the Hon'ble Apex Court in ***Cadila Health Care Ltd.*** *(supra),* which had observed in paragraph 22, 23 and 27 as under:

> "**22.** It may here be noticed that Schedule 'H drugs are those which can be sold by the chemist only on the prescription of the doctor but Schedule 'L' drugs are not sold across the counter but are sold only to the hospitals and clinics. Nevertheless, it is not uncommon that because of lack of competence or otherwise, mistakes can arise specially where the trade marks are deceptively similar. In *Blansett Pharmaceuticals Co. v. Carmick Laboratories Inc*. it was held as under:
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> "Confusion and mistake is likely, even for prescription drugs prescribed by doctors and dispensed by pharmacists, where these similar goods are marketed under marks which look alike and sound alike."
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> **23.** In the case of *Glenwood Laboratories, Inc. v. American Home Products Corpn.* the Court of the United States had held that:
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> "The fact that confusion as to prescription drugs could produce harm in contrast to confusion with respect to non-medicinal products is an additional consideration for the Board as is evident from that portion of the opinion in which the Board stated: "The products of the parties are medicinal and the applicant's product is contraindicated for the disease for which the opposer's product is indicated. It is apparent that confusion or mistake in filling a prescription for either product

could produce harmful effects. Under such circumstances, it is necessary for obvious reasons, to avoid confusion or mistake in the dispensing of the pharmaceuticals.'

The board's view that a higher standard be applied to medicinal products finds support in previous decisions of this Court, *Clifton v. Plough* (it is necessary for obvious reasons, to avoid confusion in the dispensing of pharmaceuticals'), *Campbell Products, Inc. v. John Wyeth & Bro. Inc.* (it seems to us that where ethical goods are sold and careless use is dangerous, greater care should be taken in the use of registration of trade marks to assure that no harmful confusion results')."

"**27.** As far as the present case is concerned, although both the drugs are sold under prescription but this fact alone is not sufficient to prevent confusion which is otherwise likely to occur. In view of the varying infrastructure for supervision of physicians and pharmacists of medical profession in our country due to linguistic, urban, semi-urban and rural divide across the country and with high degree of possibility of even accidental negligence, strict measures to prevent any confusion arising from similarity of marks among medicines are required to be taken

23. The Hon'ble Apex Court in ***Milmet Oftho Industries & Ors vs Allergan Inc. [(2004) 12 SCC 624]*** after reviewing the law on the subject held as follows:

"**7**. ……. In respect of medicinal products it was held that exacting judicial scrutiny is required if there was a possibility of confusion over marks on medicinal products because the potential harm may be far more dire than that in confusion over ordinary consumer products. It was held that even though certain products may not be sold across the counter, nevertheless it was not uncommon that because of lack of competence or otherwise that mistakes arise specially where the trade marks are deceptively similar. It was held that confusion and mistakes could arise even for prescription drugs where the similar goods are marketed under marks which looked alike and sound alike.

> It was held that physicians are not immune from confusion or mistake. It was held that it was common knowledge that many prescriptions are telephoned to the pharmacists and others are handwritten, and frequently the handwriting is not legible. It was held that these facts enhance the chances of confusion or mistake by the pharmacists in filling the prescription if the marks appear too much alike."

24. The Hon'ble Apex Court did not rule out the possibility that the physicians themselves would be subjected to confusion or mistake as many a time the prescriptions are telephoned to the pharmacists and others are handwritten, and frequently handwriting is not unmistakably legible. The decisions sufficiently answers the contention of Ms. Deshmukh that as the drugs are schedule "H" drugs and are sold under the prescription, there is no possibility of confusion.

25. The Plaintiff is not seeking to exercise any monopoly over the molecule CIPROFLOXACIN which is an INN. The exclusivity lies in the unique combination of the mark being derived from portion of the molecule "CIPRO" and the addition of the suffix "AL". The Plaintiff has secured the registration of the mark on 4th April, 1990 in class 5 under the Trade and Merchandise Act, 1958, and the statutory prohibition of Section 13 against registration of the word which is declared by the World Health Organization and notified in the prescribed manner by the Registrar from time to time as an INN

or which is deceptively similar to such INN was introduced in the Trade Marks Act, 1999. The repeal and saving clause of the Trade Mark Act, 1999 saves the registration granted under the Act of 1958 and in any event the prohibition contained in Section 13 of the Act is against registration of the word which is declared by WHO and notified by the Registrar and an INN, which notification has taken place in the year 2012 much subsequent to the registration of the Plaintiff's trade mark. This is apart from the fact that the Plaintiff's trade mark is not even deceptively similar to the API, which is an INN.

26. The Defendant has not raised any submission assailing the validity of the registered trade mark within the small window which has been left open by the decision in the case of ***Lupin Ltd. vs. Eris Lifesciences (P) Ltd. [2015 SCC OnLine Bom 6807]***. The registration gives the Plaintiff an exclusive right to restrain the use of an identical or deceptively similar trade mark. Under Section 31 of the Trade Marks Act, the registration is *prima facie* evidence of validity of the registered trade mark. The fact that the Plaintiff has secured registration implies that the registered trade mark is distinctive and capable of being registered.

27. The defence that the registered trade mark is common to the

trade by relying upon the website printouts and from the register of marks is insufficient unless there is extensive usage shown. Mere existence of the register is insufficient to treat the mark as common to the trade and what is required to be shown is extensive usage, which is missing in the present case.

28. In the case of ***Jagdish Gopal Kamath vs Lime & Chilli Hospitality Services Pvt Ltd. [2015 SCC OnLine Bom 531]***, this Court held as under:

> "34. …….. To succeed, the Defendant must establish that the marks on which it relies are many and that they are in extensive use and that they have, by reason of that wide usage, passed into the realm of the generic to the extent that they can no longer be said to describe any particular purveyor or user. It is not enough to merely show some use; the Defendant, on whom this burden lies, must show use by the trade that is extensive. ……."

29. It is also well settled that the Plaintiff is not expected to go after every infringer and the existence of other deceptively similar trade mark would not constitute any defence in an infringement action. The submission that there is no evidence of any real confusion is unacceptable in view of the settled position that it is only the likelihood of the confusion and in case of medicinal preparations, possibility of confusion which is sufficient to prevent the use of the impugned mark and it is not necessary to show any actual instance of confusion.

30. In the case of ***Boots Company PLC, England and Anr. vs. Registrar of Trade Marks, Mumbai and Anr.*** (supra), the rival marks were “BRUFEN” and “CROFEN”, and this Court noted that the hurried and fast utterance of the word 'CROFEN' may sound as 'BRUFEN', while that of 'CROFEN' as 'BRUFEN' and granted injunction. The Hon’ble Division Bench in the case of decision in ***Sun Pharmaceutical Industries Ltd. vs. Meghmani Lifesciences Ltd. & Anr. (***supra), noted the decision in the case of ***Boots Company PLC, England and Anr. vs. Registrar of Trade Marks, Mumbai and Anr.*** (supra), while considering the phonetic similarity of rival marks therein.

31. Dealing with the aspect of passing off, Section 27(2) of the Trade Marks Act, 1999 provides that nothing in the Trade Marks Act shall be deemed to affect right of action of passing-off. In ***Laxmikant V. Patel v. Chetanbhai Shah, [(2002) 3 SCC 65]***, the Hon’ble Apex Court held as under :

> “13. In an action for passing off it is usual, rather essential, to seek an injunction, temporary or ad interim. The principles for the grant of such injunction are the same as in the case of any other action against injury complained of. The plaintiff must prove a prima facie case, availability of balance of convenience in his favour and his suffering an irreparable injury in the absence of grant of injunction. According to Kerly [Law of Trade Marks and Trade Names (12th Edn., Sweet & Maxwell, London 1986).] (ibid, para 16.16) passing off cases are often cases of deliberate and intentional misrepresentation, but it is well settled that fraud is not a necessary element of the right of

> action, and the absence of an intention to deceive is not a defence, though proof of fraudulent intention may materially assist a plaintiff in establishing probability of deception. Christopher Wadlow in Law of Passing Off (1995 Edn., at p. 3.06) states that the plaintiff does not have to prove actual damage in order to succeed in an action for passing off. Likelihood of damage is sufficient. The same learned author states that the defendant's state of mind is wholly irrelevant to the existence of the cause of action for passing off (ibid, paras 4.20 and 7.15). As to how the injunction granted by the court would shape depends on the facts and circumstances of each case. Where a defendant has imitated or adopted the plaintiff's distinctive trade mark or business name, the order may be an absolute injunction that he would not use or carry on business under that name. (Kerly [Law of Trade Marks and Trade Names (12th Edn., Sweet & Maxwell, London 1986).], ibid, para 16.97)."

32. In ***Satyam Infoway Ltd. v. Siffynet Solutions (P) Ltd. [(2004) 6 SCC 145***] , this Court held: (SCC p. 151, para 14)

> "14. The second element that must be established by a plaintiff in a passing off action is misrepresentation by the defendant to the public. The word misrepresentation does not mean that the plaintiff has to prove any mala fide intention on the part of the defendant. Of course, if the misrepresentation is intentional, it might lead to an inference that the reputation of the plaintiff is such that it is worth the defendant's while to cash in on it. An innocent misrepresentation would be relevant only on the question of the ultimate relief which would be granted to the plaintiff [Cadbury Schweppes Pty. Ltd. v. Pub Squash Co. Pty. Ltd. [Cadbury Schweppes Pty. Ltd. v. Pub Squash Co. Pty. Ltd., 1981 RPC 429 : (1981) 1 WLR 193 (PC)] , Erven Warnink Besloten Vennootschap v. J. Townend and Sons (Hull) Ltd. [Erven Warnink Besloten Vennootschap v. J. Townend and Sons (Hull) Ltd., 1980 RPC 31 : 1979 AC 731 (HL)]].

33. The classical trinity applicable to passing of action is reputation and goodwill, misrepresentation and damage. The goodwill and reputation to be established is on the date on which the use of the

impugned mark commences. In case of passing off, the similarity of the rival marks should be relatable to the test of confusion and deception intended or unintended. As already held, there is phonetic similarity between the rival marks. The impugned drug contains the molecule ACECLOFENAC and the explanation that the impugned mark is combination of aceclofenace and pyrexia does not stand to reason. The impugned mark is ACIPROX and no manner of combination of the words aceclofenac and pyrexia would result in the word ACIPROX. The contention that the adoption is bonafide on the ground that the Defendant has applied for registration of it mark is clearly misconceived. If the adoption is not shown to be bonafide, misrepresentation is evident.

34. The Plaintiff has secured the registration of its mark in the year 1990 and the Defendant is a late entrant, having being incorporated in the year 2023. The Defendant has pleaded that it had taken search of the trade mark registry before adoption of the mark. Accepting the argument for the moment, the search would have revealed the Plaintiff's registered mark and despite the same if the Defendant adopts the mark, evidently there is misrepresentation. The Plaintiff has placed on record its sales turnover which in the year 2023, when the Defendant was

incorporated was Rs.13,97,00,000/-. Considering the voluminous sales and long standing adoption and use of the mark, the Plaintiff has *prima facie* demonstrated goodwill and reputation in its mark. The impugned mark used for treating different ailment is likely to cause damage to the Plaintiff's reputation and goodwill as there is possibility of the Defendant's drug being handed over when asked for Plaintiff's drug.

35. Dealing with the citations relied upon by the Defendant, in the case of ***Sun Pharmaceutical Laboratories Ltd. vs. Hetero Healthcare Ltd. and Anr.*** (supra), the marks in question were "LETERO" and "LETROZ". In that case, the application for injunction came to be dismissed which was upheld by the Hon'ble Division Bench. In that case, the claimant had derived its mark from the molecule LETEROZOLE and even the rival mark was derived from the same generic drug derived from the active ingredient LETEROZOLE. It is in that context the Court considered that the Claimant cannot be allowed to monopolize the INN LETEROZOLE. In that case both the rival products were derived from portions of the molecule LETEROZOLE which constitutes the distinguishing feature.

36. In the case of ***Aristo Pharmaceutical Private Limited vs.***

Healing Pharma India Private Limited and Ors. (supra), the mark in question were "ARISTO / ACECLO" and "ACECLOHEAL". In that case as the Plaintiff had adopted clipped version of the ACECLOFENAC without any prefix or suffix which could have lend distinctiveness to its mark, this Court held that the Plaintiff was not entitled to any exclusive right by use of clipped version of descriptive and generic term. The facts are clearly distinguishable and does not assist the case of the Defendant.

37. In the case of the ***F. Hoffmann-La Roche and Co. Ltd. vs Geoffrey Manners & Co. Pvt. Ltd.*** (supra), the marks in question were "Protovit" and "Dropovit". The Hon'ble Apex Court applied the ***Pianotist Co. Ltd. [(1906) 23 RPC 774]*,** and after comparing the words "Protovit" vs "Dropovit" held that the same were dissimilar. There is no quarrel with the proposition of law laid down by the Hon'ble Apex Court that the marks have to be compared as whole. However, it is the application of law to the facts of each case would differ and in the present case, this Court has held that there is phonetic similarity between the rival marks.

38. In light of the above, the Plaintiff has made out *prima facie* case for infringement of trade mark and passing off. The Plaintiff has adopted the mark in the year 1990 and the balance of

convenience tilts in favour of the Plaintiff. The Defendant is a late entrant incorporated in the year 2023 and has applied for registration of its mark on 16th January, 2023. No irreparable harm would be caused to the Defendant by grant of injunction. The Plaintiff has made out a *prima facie* case for grant of interim reliefs. Resultantly, the Interim Application is made absolute in terms of prayer clause (a) and (b) as under:

> "(a) that pending the hearing and final disposal of Suit, the Defendant by itself, its Directors, employees, servants, dealers, franchisees, distributors, stockiest, licensees, agents, sister concerns, wholesalers, retailers, representatives, affiliates, associates and/or assigns and all persons acting for and on its behalf be restrained by a temporary order and injunction of this Hon'ble Court from in any manner manufacturing, selling, offering for sale, stocking, soliciting, exporting, displaying, advertising, marketing, promoting and/or in any manner whatsoever using directly or indirectly in relation to any pharmaceutical and/or medicinal preparation and/or such allied and cognate goods the trade mark 'ACIPROX' and using the mark 'ACIPROX' and/or using any other mark or word being identical with and/or deceptively similar to the Applicant's registered trade mark 'ALCIPRO' and its variant and/or using any other trade mark so as to infringe the Applicant's registered trademark 'ALCIPRO' and its variant bearing Nos. 527403 and 821181 in any other manner whatsoever:"
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> (b) that pending the hearing and final disposal of Suit, the Defendant by itself, its Directors, employees, servants,

dealers, franchisees, distributors, stockiest, licensees, agents, sister concerns, wholesalers, retailers, representatives, affiliates, associates and/or assigns and all persons acting for and on its behalf be restrained by a temporary order and injunction of this Hon'ble Court from in any manner manufacturing, selling, offering for sale, stocking, soliciting, exporting, displaying, advertising, marketing, promoting and/or in any manner whatsoever using directly or indirectly in relation to any pharmaceutical and/or medicinal preparation and/or such allied and cognate goods from using the trade mark 'ACIPROX' and using the mark 'ACIPROX and/or using any other mark or word being identical with and/or deceptively similar to the Applicant's registered trade mark 'ALCIPRO' and its variant and/or using any other trade mark so as to pass off the Defendant's goods / products as those of the Applicant's and/or to indicate any connection with the Applicant;"

[Sharmila U. Deshmukh, J.]