

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL IP SUIT NO. 535 OF 2016

Glenmark Pharmaceuticals Limited ... Plaintiff

Versus

Zenlabs India And Anr. ... Defendants

Mr. Mahesh Mahadgut a/w. Mr. Kaivalya Shetye, Ms. Kalyani Paunikar for the Plaintiff.

None for the Defendants.

CORAM : ARIF S. DOCTOR, J

RESERVED ON : 27th APRIL, 2026

PRONOUNCED ON : 15th JUNE 2026

JUDGMENT:

1. This present suit is instituted for infringement of trade mark, combined with a cause of action of passing off. The Plaintiff in the present suit is a company incorporated under the Companies Act, 1956, having its registered office at the address mentioned in the cause title of the Plaint. The Plaintiff has sought a permanent injunction to restrain the Defendants from infringing the Plaintiff's registered trade mark 'ZINOX' ("the Plaintiff's mark") and from using the

trade mark 'ZENOX' ("impugned mark") to pass off the Defendants' goods as those of the Plaintiff's.

2. It is the Plaintiff's case that the impugned mark is deceptively similar to the Plaintiff's registered trade mark 'ZINOX' and that both the marks are used in relation to the same goods, i.e., medicinal and pharmaceutical preparations.
3. By an Order dated 18th April 2016, this Court granted ad interim reliefs in favour of the Plaintiff, in respect of infringement of trade mark. On 25th July 2016, this Court confirmed the ad interim Order dated 18th April 2016.
4. Since, despite service of the writ of summons and in spite of appearing at the ad interim stage, the Defendants did not file any Written Statement and opposed the reliefs claimed by the Plaintiff, the suit came to be transferred to the list of undefended suits as per the Order of the Prothonotary and Senior Master dated 15th December 2016.
5. On 15th April 2026, the Advocate for the Plaintiff tendered the affidavit of evidence in lieu of examination-in-chief, as also the affidavit of documents along with a compilation of documents on behalf of Plaintiff's Witness No. 1

Ms. Archana Madhav Bene, who is the General Manager of Plaintiff Company.

Accordingly, the Plaintiff's documents were marked 15th April 2026.

6. Mr. Mahadgut, Learned Counsel appearing on behalf of the Plaintiff submitted that in the year 2007, the Plaintiff had adopted the distinctive trade mark 'ZINOX' in respect of medicinal and pharmaceutical preparations, and the said mark has been put to use in relation to the said goods in June 2013. He submitted that the Plaintiff has been manufacturing and marketing the products bearing the said mark, which contains 'Garenoxacin' and is used for the treatment of bacterial infections.
7. Mr. Mahadgut pointed out from the legal proceedings certificate marked in evidence as Exhibit 'A' that the Plaintiff is a registered proprietor of the mark 'ZINOX' in Class 5 bearing No. 1535546 and such registration is valid, subsisting and in force. He then placed reliance upon the Plaintiffs sales turn-over statement marked in evidence as Exhibit 'B', to point out that the same supported his submission that the Plaintiff used the said mark extensively throughout India and had acquired notable goodwill and reputation pursuant to

the same. He also pointed out from the invoices marked as Exhibit 'C' that the Plaintiff has been selling the products with the 'ZINOX' mark since 2013.

8. Mr. Mahadgut then pointed out from the Chartered Accountant's Certificate of the Plaintiff's annual sales promotion expenses marked in evidence as Exhibit 'D' that the Plaintiff incurred enormous amounts of expenditure upon the promotional activities pertaining to the products, including the products under the said mark.
9. Mr. Mahadgut then submitted that in February 2016, the Plaintiff came across the Defendants' product ("**impugned product**") bearing the impugned mark, i.e., 'ZENOX', being sold in respect of medicinal and pharmaceutical preparations containing 'Ofloxacin', which is meant for use in the treatment of bacterial infections. He submitted that consuming the impugned product instead of the Plaintiff's product can be hazardous because the two products cannot be distinguished from one another. He submitted that this was bound to lead to confusion and deception. He then invited my attention to both the products which, for convenience, are reproduced below viz.

Plaintiff's product	Defendants' product
	

10. Mr. Mahadgut submitted that the Defendants are manufacturing and selling the impugned product under the impugned mark 'ZENOX', and the same is both visually and phonetically similar to the Plaintiff's registered mark 'ZINOX' in Class 5. He submitted that given the deceptive similarity, the Defendants were using the impugned mark only with a view to trade upon and cash in on the goodwill and reputation of the Plaintiff's registered mark. He further submitted that since the impugned mark is used in respect of medicinal preparation, the same seriously exposes the medical trade as well as the public to an inevitable risk of deception and/or confusion and jeopardises public interest at large.

11. He then placed reliance upon the decision in the case of ***K. R. Chinna Krishna Chettiar v. Shri Ambal & Co., Madras & Anr.***¹, to point out that the Hon'ble Supreme Court had, while considering the aspect of deceptive similarity between the trade marks 'SRI ANDAL' and 'SRI AMBAL', held as follows:

“6. The vital question in issue is whether, if the appellant’s mark is used in a normal and fair manner in connection with the snuff and if similarly fair and normal user is assumed of the existing registered marks, will there be such a likelihood of deception that the mark ought not to be allowed to be registered (see In the matter of Broadhead’s Application for registration of a trade mark). It is for the court to decide the question on a comparison of the competing marks as a whole and their distinctive and essential features. We have no doubt in our mind that if the proposed mark is used in a normal and fair manner the mark would come to be known by its distinguishing feature “Andal”. There is a striking similarity and affinity of sound between the words “Andal” and “Ambal”. Giving the due weight to the judgment of the Registrar and bearing in mind the conclusions of the learned Single Judge and the Divisional Bench, we are satisfied that there is a real danger of confusion between the two marks.

7. There is no evidence of actual confusion, but that might be due to the fact that the appellant’s trade is not of long standing. There is no visual resemblance between the two marks, but ocular comparison is not always the decisive test. The resemblance between the two marks must be considered

¹ (1969) 2 SCC 131.

with reference to the ear as well as the eye. There is close affinity of sound between Ambal and Andal”.

He then also placed reliance upon the decision of this Court in the case of ***Hiralal Prabhudas v. Ganesh Trading Company & Ors.***², wherein the Division Bench of this Court, while considering phonetic similarity between the trade marks ‘HIRALAL’ and ‘HIMATLAL’, observed that the great deal of phonetic similarity between the disputing marks would undoubtedly cause confusion in the minds of an ordinary purchaser of average intelligence or an illiterate person.

12. Mr Mahadgut then also placed reliance upon the decision in the case of ***Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.***³ to point out that the Hon’ble Supreme Court had held as follows:

“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 to be considered:

² 1983 SCC OnLine Bom 284.

³ 2001 SCC (5) 73.

- a) *The nature of the 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.*
- c) *The nature of the goods in respect of which they are used as trade marks.*
- 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 mode of purchasing the goods or placing orders for the goods and*
- g) *Any other surrounding circumstances which may be relevant in the extent of dissimilarity between the competing marks.”*

13. Mr. Mahadgut submitted that the goods involved in the present Suit were products of medicinal and pharmaceutical preparations having different chemical compositions. He pointed out from the decision of ***Cadila Health Care Ltd.*** that the Hon’ble Supreme Court had specifically held that stringent measures should be adopted by the Courts in order to prevent the likelihood of confusion in respect of medicinal products, since confusion between 2 medicinal products and their misrepresentation could have life-threatening consequences and not merely be inconvenient.

14. Basis the above, he submitted that since the Plaintiff's trade mark 'ZINOX' and the impugned mark 'ZENOX' were both visually and phonetically virtually identical, coupled with the fact that the Plaintiff was the registered proprietor of trade mark 'ZINOX', the Plaintiff was entitled to and had made out a case for the grant of relief in terms of prayer clauses '(a)', '(b)' and '(d)' of the Plaint.
15. In addition to the above, Mr. Mahadgut submitted that the present suit, being a Commercial Suit, was governed by Section 35 of the Civil Procedure Code, 1908, ("CPC") as amended by Section 16 of the Commercial Courts Act, 2015, and hence the Plaintiff would therefore be entitled to an order of costs. He pointed out from the provision that the costs contemplated thereunder would include legal fees and all other expenses incurred in connection with the proceedings. He pointed out that Section 35(3) of the amended CPC, provides that while awarding costs, due regard is also required to be given to the Defendants' conduct. He has pointed out that, in addition to costs as contemplated under the Commercial Courts Act, 2015, this Court also has the inherent power under Section 151 of the CPC, to grant exemplary costs in

favour of the Plaintiff. He submitted that such an order was required to be passed to curb the peril of misuse of the Plaintiff's trade mark especially when the products are medicines, which calls for a stricter test of comparison.

16. He thus submitted that the Defendants are both severally liable to pay punitive damages of an amount of Rs. 5,00,000/- along with interest calculated at 21% per annum from the date of filing the present suit till the final judgement in favour of the Plaintiff. Considering further the nature of infringement and passing off and the nature of rival goods being medicinal and pharmaceutical preparations, and with a view to dissuading others from indulging in such activities, it is imperative that punitive damages be awarded to the Plaintiff.

17. After hearing the Learned Counsel for the Plaintiff and going through the original documents and the evidence of the Plaintiff, none of which has either been disputed, much less denied, I am satisfied that the Plaintiff has made out a case for infringement and passing off, for the reasons are as follows :

A. It is evident from the trade mark registration certificate issued on 28th

February 2007 that the Plaintiff had acquired the registration of the mark

‘ZINOX’. Furthermore, the evidence led by Ms. Archana Madhav Bene established that the registration of the said mark was renewed on 18th January 2017 by the Plaintiff rendering the same valid up to the year 2027.

It is therefore clear that the Plaintiff has been the owner and proprietor of the mark ZINOX since 2007, and the Plaintiff’s rights in the said mark are valid and subsisting till today.

B. The Plaintiff has also sufficiently demonstrated its use of the mark ‘ZINOX’ in respect of the medicinal and pharmaceutical products since the year 2013, through (i) the sales turn over statement which was certified by a Chartered Accountant; (ii) the invoices showing sale of the Plaintiff’s products under ‘ZINOX’ mark; (iii) the Chartered Accountant’s Certificate showing the promotional expenses incurred by the Plaintiff for the said mark. Therefore, to my mind, the Plaintiff has sufficiently proved the commercial use of the mark and has established that ‘ZINOX’ has acquired distinctiveness, which is exclusively associated by the public and persons in the trade with the Plaintiff.

C. A perusal of the rival trade marks makes plain that they are almost identical, and the only difference between the impugned mark 'ZENOX' and the Plaintiff's mark 'ZINOX' is the replacement of the letter "I" by "E", and hence both the marks look and sound similar. Therefore, the Defendants' use of the impugned mark in respect of medicinal products is likely to cause confusion amongst the consumers and members of the trade. In the decision of *K. R. Chinna Krishna Chettiar*, the Hon'ble Supreme Court had observed that visual similarity is not the only test to follow in determining deceptive similarity and that the test of similar sound must also be considered to evaluate if the disputing marks are deceptively similar or not. In the facts of present case, the impugned mark and Plaintiff's mark are not only visually similar but the same are homophones, and therefore there exists every possibility of confusion arising in the minds of the consumers and members of the trade alike in respect of the said marks.

D. *Crucially*, the Defendants have not attempted to justify their adoption and use of the impugned mark, nor have they shown any other defence available under the law. The Defendants have, in spite of appearing, chosen not to file a Written Statement nor, in any manner, denied the Plaintiffs' case. The Defendants have also not led any evidence or cross-examined the Plaintiff's witness, which has resulted in the Plaintiff's evidence remaining uncontroverted. The Defendants have, therefore, plainly accepted the Plaintiff's case as set out in the *Plaint*.

E. From the material upon which the Plaintiff has placed reliance, the adoption of the mark 'ZENOX' by the Defendants is subsequent to the Plaintiff's registration and use of the mark 'ZINOX'. The material placed before me as well as the Defendants' negligent conduct pursuant to the present proceedings, demonstrate that the Defendants' adoption and use of the impugned mark is plainly dishonest and without any due cause and is, in fact to ride over the Plaintiff's goodwill and reputation.

F. *Importantly*, the Defendants are using the impugned marks in respect of medicinal and pharmaceutical preparations. Since there exists a likelihood of confusion between the impugned mark and the Plaintiff's mark, it would cause the Defendants' products to be passed off as those of the Plaintiff and therefore, a possibility of threat to public health cannot be ruled out. Thus, the Plaintiff's reliance upon the decision of *Cadila Health Care Ltd.* is apposite. Therefore, in intellectual property cases in which medicinal products are in question, the standards of considering deceptive similarity are stricter, and the slightest possibility of confusion is to be avoided.

G. Hence, in my view, the Plaintiff has made out a case for infringement of trade mark and passing off. The perusal of the rival marks makes it plain that the Defendants have adopted the impugned mark in a dishonest manner and ride on the Plaintiff's goodwill and reputation. The Plaintiff is thus entitled to the grant of relief of injunction in terms of prayer clauses '(a)', '(b)' and '(d)' of the present Suit. Though the Plaintiff has claimed damages to the tune of Rs. 5,00,000/- (Rupees Five Lakhs only), the

Plaintiff has failed to lead any evidence in support of the claim for damages and is thus not entitled to relief in terms of prayer clause '(c)'.

H. It is well settled that, under Section 35 of the CPC, as amended by Section 16 of the Commercial Courts Act, 2015, the costs shall ordinarily follow the event and be awarded to the successful party. The provision further requires the Court, while determining costs, to have due regard, *inter alia*, to the conduct of the parties. As observed in '(E)' above, the Defendants have chosen not to defend the Suit and such conduct is an additional factor that makes it clear that the Defendants' adoption of the impugned mark was dishonest and was actuated in bad faith. Moreover, since the impugned products are medical products, a stricter order of costs must follow, as the Defendants have profited at the potential risk to the public at large. In these circumstances, the Plaintiff is entitled to an award of costs, considering the conduct of the Defendants and the statutory mandate under Section 35 of the CPC, as amended.

18. In view of the aforesaid reasons, I pass the following order:

ORDER

- i. The Suit is decreed in terms of prayer clauses '(a)', '(b)' and '(d)'.
- ii. According to the reasons recorded in '(H)' above, each of the Defendants shall pay costs of Rs. 5,00,000/- to the Plaintiff within a period of 8 weeks from today. In the event the costs are not paid within a period of 8 weeks from today, interest at the rate of 8% shall apply.
- iii. The office shall return the original documents to the Advocate for the Plaintiff upon the Advocate of the Plaintiff handing over a true copy of this Order along with Photostat copies of the said compilation of documents duly certified by them as true copies
- iv. The Suit is disposed of in the aforesaid terms.

[ARIF S. DOCTOR, J.]